

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CENTRAL VALLEY AG COOPERATIVE)
and CENTRAL VALLEY AG)
COOPERATIVE HEALTH CARE PLAN,)

Plaintiffs,)

vs.)

DANIEL K. LEONARD, SUSAN)
LEONARD, THE BENEFIT GROUP,)
INC., ANASAZI MEDICAL PAYMENT)
SOLUTIONS, INC., d/b/a/)
ADVANCED MEDICAL PRICING)
SOLUTIONS, CLAIMS DELEGATE)
SERVICES, L.L.C., and GMS)
BENEFITS, INC.,)

Defendants.)

* * *

CASE NO. 8:17CV379

D E P O S I T I O N

DEPOSITION OF JEAN REED taken before

Tina M. Nelson, Registered Merit Reporter and
General Notary Public in and for the State of
Nebraska, at 10:01 a.m. on February 22, 2019, at
10050 Regency Circle, Omaha, Nebraska, taken on
behalf of the defendant, TBG, pursuant to the
Federal Rules of Civil Procedure and the within
stipulations.

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EXHIBIT 2

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Also present: Mr. Rick Smithpeter

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E X H I B I T S

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No.

Identified

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190. Expert witness report

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191. Jackson Lewis invoice through 2-19-19

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192. Attachment A

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1 (Deposition Exhibits 190 and 191 were marked.)

2 JEAN REED,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. THALKEN:

7 Q. Good morning, Ms. Reed; we met briefly
8 before the deposition. My name is Tim Thalken, I
9 represent The Benefit Group in this lawsuit.
10 Would you please state your full name for the
11 record.

12 A. Jean Marie Reed.

13 Q. What is your date of birth?

14 A. 7-24, 1952.

15 Q. Where do you live?

16 A. Sioux Falls, South Dakota.

17 Q. And where do you work?

18 A. Self-employed, Impact Consulting.

19 Q. Does Impact Consulting have any employees?

20 A. Just myself.

21 Q. How long has Impact Consulting been in
22 operation?

23 A. It was established in 1990.

24 Q. And what type of consulting do you do?

25 A. The majority of my consulting work is in

1 health benefits, managed care. And then in
2 addition to that, I do some consulting on
3 strategic planning, marketing, communications and
4 advertising.

5 Q. Have you ever worked for a third-party
6 administrator before?

7 A. Yes, I have.

8 Q. Go ahead. Who?

9 A. Avera Health Plans; I was the president
10 of Avera Health Plans for four years.

11 Q. And that's a third-party administrator?

12 A. We functioned as a third-party
13 administrator. They were licensed as a -- as an
14 HMO in South Dakota, Iowa and at one point in time
15 in Nebraska and in Minnesota.

16 Q. And what did you do as president of Avera
17 Health Plans, what was your responsibility?

18 A. Oversaw all of the operations
19 essentially, had responsibility for all of the
20 staff, all of the financials, claims processing.

21 Q. Did you interact -- or have you
22 interacted at all with The Benefit Group before?

23 A. I have not.

24 Q. In this case did you ask for some
25 information through Kutak Rock to obtain from

1 The Benefit Group?

2 A. Essentially they sent information to me.

3 Q. Okay. Are you aware of any situation
4 where The Benefit Group didn't cooperate in that
5 process?

6 A. Not that I'm aware of.

7 Q. Okay. In front of you is Exhibit 190.
8 Is that a copy of your expert report in this case?

9 A. Yes, it is.

10 Q. And just, I guess, to clarify, Exhibit 190
11 also includes -- looks like there's a spreadsheet
12 on the back for a date of service report --

13 A. Correct.

14 Q. -- correct?

15 A. Correct.

16 Q. And did you prepare this report?

17 A. I did.

18 Q. Have you made any revisions to the report --

19 A. Have not.

20 Q. -- since -- since January 29 --

21 A. Have not.

22 Q. -- 2019? Okay. And January 29, 2019, is
23 the date of your report --

24 A. Correct.

25 Q. -- correct? Okay. When were you hired

1 to provide consulting services in this case?

2 A. Actually those conversations started July
3 of 2017. Contract was signed September of '17.

4 Q. Okay. And who is the contract with?

5 A. I would have to actually look at the
6 contract itself to give -- to give you the exact
7 name because all of the work that I've done has
8 been predominantly with Kutak Rock.

9 Q. Okay. Do you know if your agreement was
10 with Kutak Rock or was it with Jackson Lewis or
11 CVA directly?

12 A. It was with CVA directly, yeah.

13 Q. Have you issued invoices --

14 (A discussion was held off the record.)

15 Q. So I think where we left off was, you
16 think your engagement is with CVA --

17 A. Yes, it is.

18 Q. -- directly.

19 A. Yep.

20 Q. Okay. And then you provided me an
21 example of -- or excuse me, with Exhibit 191?

22 A. Correct.

23 Q. What is that document?

24 A. That actually is an invoice of the hours
25 through February 19th of 2019.

1 Q. Okay. And at the top it says Jackson
2 Lewis invoice?

3 A. The way that it had been set up was that
4 I would submit the hours and any work that I did
5 for those -- for those hours directly to Jackson
6 Lewis, and then they would pass that on to the
7 client.

8 Q. Okay. And did you issue regular invoices
9 throughout?

10 A. Did not. This is the first invoice.

11 Q. Okay. The first entry on Exhibit 191
12 says C-o-n call KB. Do you --

13 A. Yes.

14 Q. -- know who KB is?

15 A. Kathleen Barrow.

16 Q. Okay. August 9th, 2017, C-o-n call HP.

17 A. That is with Heather --

18 MS. BAUMERT: Panick.

19 A. Panick.

20 THE WITNESS: Thank you.

21 Q. Do you know how to spell her last name?

22 MS. BAUMERT: I do. P-a-n-i-c-k.

23 THE WITNESS: Thank you.

24 Q. Is that a Jackson Lewis attorney?

25 MS. BAUMERT: Yes.

1 A. Yes.

2 Q. Then there's one on December 18, 2017,
3 conference call KR?

4 A. Kutak Rock.

5 Q. Okay. January 15, 2019, meeting JL.

6 A. Jackson Lewis.

7 Q. Okay. So in July -- there's an entry
8 here July 8, 2017, for one nonbillable hour,
9 conference call. What's the -- why is it a
10 nonbillable hour?

11 A. It was essentially when we talked about
12 the engagement. And at that point Kathy and I
13 talked about what would be involved, is it
14 something that I'd be interested in doing. She
15 talked about me -- about my experience to see if
16 it was something that she thought I could assist
17 with.

18 Q. And what was she asking you to assist
19 with?

20 A. She was asking me to assist with
21 reviewing the claims, my experience in being able
22 to go through the documents, validate the accuracy
23 of the billing, being able to give recommendations
24 on what payments should be within the marketplace,
25 my knowledge of the marketplace and how that

1 knowledge had been gained.

2 Q. Did you know Ms. Barrow before this
3 engagement?

4 A. We had worked together on another -- in
5 another professional capacity for another client
6 that she was serving at that time, that she and I
7 both served at that time.

8 Q. And what was that engagement?

9 A. That engagement was Jackson Lewis has a
10 client that they were serving at that point in
11 time, State of South Dakota.

12 MS. BAUMERT: I'm probably going to
13 have to object on attorney-client
14 privilege with regard to that --

15 THE WITNESS: Okay.

16 MS. BAUMERT: -- relationship.

17 MR. THALKEN: Yeah.

18 MS. BAUMERT: I don't know anything
19 about it.

20 Q. Yeah. And I don't need to know --

21 A. Okay.

22 Q. -- who or --

23 A. Okay.

24 Q. I just kind of need big picture.

25 A. Yeah. We both had a professional

1 relationship with a client and became contacts in
2 that regard.

3 Q. And did you serve as an expert in that
4 capacity?

5 A. No. I have an ongoing client relationship.

6 Q. Consulting --

7 A. Consulting relationship.

8 Q. Doesn't have to do with litigation?

9 A. No, not at all.

10 Q. Have you ever testified before as an
11 expert in court?

12 A. I have in one other situation. That's
13 been ten-plus years ago.

14 Q. What case was that?

15 A. It was a case in Wisconsin where there
16 was a -- a transplant that had been denied.

17 Q. And in what capacity did you serve as an
18 expert?

19 A. I served as an expert as a former health
20 plan CEO, explaining the process that a health
21 plan would go through to review complicated
22 medical cases and why those kinds of cases could
23 legitimately be denied.

24 Q. Have you ever been excluded as an expert
25 witness in any case?

1 A. Have not.

2 Q. Have you ever given a deposition before?

3 A. I have.

4 Q. How many times?

5 A. I would say eight or more.

6 Q. What type of cases?

7 A. Types of cases involved wrongful
8 termination, work comp cases. Most of these were
9 during my employment with my former employer.

10 Q. With Avera?

11 A. Yes.

12 Q. Any depositions as an expert witness
13 prior to today?

14 A. Just the one I previously mentioned.

15 Q. The Wisconsin case?

16 A. Yeah.

17 Q. Okay. Exhibit 190, your expert report,
18 are those all -- does that contain all of the
19 opinions you intend to offer in this case?

20 A. It is.

21 Q. Do you have any opinions regarding the
22 services that The Benefit Group provided to the
23 plan?

24 A. I'm not sure I understand.

25 Q. Do you have any criticisms of anything

1 that The Benefit Group did with respect to the
2 plan in this case?

3 MS. BAUMERT: Objection to the
4 extent that exceeds the scope of the
5 report, I suppose.

6 A. Yeah. I don't -- yeah, I don't know how
7 that relates specifically to -- to the claim
8 reviews.

9 Q. Well, and that's what I'm trying to
10 understand. Are you going to offer any opinions
11 that The Benefit Group did anything wrong in this
12 case?

13 MS. BAUMERT: Objection; same
14 objection.

15 A. I don't know that I can speak to that.

16 Q. So looking at, looks like, Page 2 of your
17 report, at the top you say, I have been asked to
18 opine concerning the accuracy of the claims
19 submitted --

20 A. Uh-huh.

21 Q. -- based on the information provided and
22 review charge amounts, to provide an opinion
23 regarding the appropriateness of the charge
24 amounts and to recommend a target settlement
25 amount for these outstanding claims. For certain

1 claims I was also asked to review the claims and
2 other documents to reconcile the claim amount and
3 determine the exact amount the patient or the plan
4 owed on the claim.

5 A. Uh-huh.

6 Q. I have also been asked to opine regarding
7 the payment recommendations by AMPS/CDS for claims
8 of plan participants during plan years 2015 and
9 2016. Did I read that correctly?

10 A. Correct.

11 Q. And is that the scope of what you did in
12 this case?

13 A. Yes.

14 Q. Page 3 of your report, fourth bullet
15 down -- and this, I believe, is -- is your
16 qualification -- under the heading, Qualifications?

17 A. Correct.

18 Q. Fourth bulletpoint down says, Implemented
19 a new hospital outpatient risk-based payment
20 methodology for one of South Dakota's largest
21 employers.

22 A. Correct.

23 Q. What is a risk-based payment methodology?

24 A. A risk-based payment methodology is a
25 fixed payment for outpatient services, specifically

1 in this case it's an ambulatory payment
2 classification system, also known as a house --
3 hospital outpatient prospective payment system.
4 It's a Medicare-based payment.

5 Q. Is that similar to reference-based
6 reimbursement?

7 A. No --

8 Q. How does it differ?

9 A. -- absolutely not at all. It's a
10 Medicare-based system where each of the providers
11 has a contract where they understand what it is
12 that they're going to be paid based on a
13 conversion factor. They know based on the -- the
14 weight, again, a CMS weight for that specific case
15 how much they're going to be paid for that episode
16 of care. And the reason that it's risk based is
17 that if the provider is able to process the
18 payment within the defined terms, the defined time
19 frame, then they're successful in reaching --
20 making -- if you will, making dollars on that
21 case. If they exceed the expected time frame,
22 then they lose dollars on that case. So that's
23 why it's risk based, and that's stated in their
24 contract.

25 Q. Do you have experience with reference-based

1 reimbursement plans?

2 A. In that I'm familiar with them, from that
3 stand- -- standpoint, yes, I do have experience
4 with them.

5 Q. What is your familiarity with
6 reference-based reimbursement?

7 A. When I was responsible for managed care
8 contracts within Avera, we had a couple of
9 different providers -- or payment organizations
10 that tried to put risk-based pricing in place
11 within our health system. We rejected those and
12 immediately refused to cooperate with those
13 third-party administrators.

14 Q. Now, you said tried to put together
15 risk-based pricing.

16 A. I'm -- I'm sorry, not risk-based but
17 reference-based pricing. Yeah.

18 Q. So there were -- so there were a couple
19 of plans or what were they?

20 A. TPAs.

21 Q. Okay. So there were a couple of TPAs,
22 third-party administrators --

23 A. Uh-huh.

24 Q. -- who tried to implement reference-based
25 reimbursement with Avera, and Avera rejected --

1 A. Correct.

2 Q. -- those.

3 A. Yes.

4 Q. Any other experience with reference-based
5 reimbursement?

6 A. My other experience with it is knowledge
7 of reference-based pricing in the State of
8 Montana.

9 Q. Okay. What's your knowledge?

10 A. The State of Montana, for the state
11 employees in Montana, uses a reference-based
12 pricing model where they're unable to obtain a
13 contract.

14 Q. Your familiarity when you were at Avera
15 with those RBR -- I'll call it RBR --

16 A. Uh-huh. Okay. Yes.

17 Q. -- for short. Do you understand --

18 A. Yes.

19 Q. -- what that means?

20 A. Uh-huh, yes.

21 Q. When was that experience?

22 A. That -- that would have been -- that
23 would have been in the late '90s to early 2000.
24 We had -- we had experience then and then again
25 probably in mid 2000, so maybe 2003, 2004.

1 Q. Do you know -- do you remember who the
2 TPAs were that were trying reference-based
3 reimbursement?

4 A. I can't say specifically who they were.
5 I do remember one was from out of state, I don't
6 remember the name. Both of them were from out of
7 state, I don't remember the names.

8 Q. Did Avera operate in Nebraska at any
9 point?

10 A. We -- yes.

11 Q. When?

12 A. Currently operate in Nebraska. And
13 acquired -- acquired hospital and clinic -- I
14 don't remember the year, but did acquire both
15 hospitals and clinics in Nebraska.

16 Q. Which ones, if you can remember?

17 A. St. Anthony in O'Neill, Nebraska, and the
18 clinics associated in O'Neill.

19 Q. Okay. Any others?

20 A. There were other hospitals that are part
21 of a -- a part of a hospital buying group in
22 Nebraska around the O'Neill area that we consulted
23 with but did not actually own or manage those.
24 And they were all independent hospitals.

25 Q. So earlier you mentioned Avera was, I

1 thought, a health plan.

2 A. Uh-huh.

3 Q. But it also owns hospitals; right?

4 A. Correct, hospitals, clinics, nursing homes.

5 Q. So when you worked for Avera, were you
6 working for the hospitals?

7 A. Both. I -- I was at the health system
8 and then also for a period of time was at the
9 health plan.

10 Q. Okay. And looks like you're being paid
11 \$350 per hour?

12 A. Correct.

13 Q. Okay. And that's reflected on Exhibit 191.

14 A. Yes.

15 Q. And this is -- this shows \$32,900 billed
16 to date?

17 A. Through the 19th.

18 Q. Through --

19 A. Yeah.

20 Q. -- February 19, 2019.

21 A. Correct.

22 Q. And none of this has actually been billed
23 though; correct?

24 A. Correct.

25 Q. All right. Page 6 of your report,

1 Exhibit 190, first full paragraph --

2 A. Okay.

3 Q. -- second sentence, Generally when a
4 preferred provider organization is in a position
5 where they represent larger employer groups
6 collectively, they can obtain a minimum of a 20 to
7 25 percent discount and upwards of a 30 to 35
8 dis- -- excuse me, 30 to 35 percent --

9 A. Uh-huh.

10 Q. -- discount or possibly fixed
11 reimbursement on certain procedures such as
12 imaging or other high dollar cases if the TPA can
13 administer the payment methodology.

14 A. Correct.

15 Q. That's -- that's part of your opinion in
16 this case?

17 A. Absolutely.

18 Q. Okay. What is the basis for the
19 discounts that you've listed?

20 A. Two different -- two different places.
21 One would be during the time that I was
22 responsible for negotiating the contracts for
23 Avera, those were the types of discounts that --
24 that were normal, if you were, not only from --
25 from Avera but were representative of what payers

1 generally received within the marketplace, whether
2 it was a Wellmark or it was a Dakota Care, it was
3 Blues of Minnesota, it was United from the -- you
4 know, the Nebraska area. Those were the types of
5 discounts that were given, whether it was Avera or
6 someone else.

7 And so -- and it depended upon the size
8 of the employer. Obviously the larger the
9 employer, if you were doing a direct contract,
10 then those discounts were larger. And then when I
11 started to do direct contracts with employers, and
12 Avera did some of those and I've also done those
13 on my own, you find that if there's a larger
14 employer, again, you'll see a willingness for
15 there to be an increase in the discount.

16 Q. So is it fair to say then that
17 essentially a standard PPO agreement you would
18 expect a 20 to 25 percent discount off billed
19 charges; is that --

20 A. Correct. Yeah.

21 Q. But in some cases if you're larger, you
22 might get 30 to 35 percent?

23 A. Thirty to 35 if you're larger. And then,
24 again, you'll see reference later in the report
25 that there is an opportunity for it to be even

1 higher than that, again, depending upon the size
2 of the group.

3 Q. What do you consider to be a large
4 employer for purposes of getting that larger
5 discount?

6 A. Typically it can be a larger group if
7 you're talking -- in our marketplace, in --

8 Q. Right.

9 A. -- this particular area?

10 Q. In Nebraska.

11 A. In Nebraska? If you're looking to say if
12 you've got maybe 1500 to 2,000 employees that are
13 going to be accessing and, particularly, if you
14 can offer some sort of exclusivity or some kind of
15 steerage to a particular location.

16 Q. Define steerage.

17 A. Steerage meaning that there is some kind
18 of -- either it's an exclusive arrangement or
19 there's some type of incentive for a member to use
20 a particular facility.

21 Q. So, for example, an employer could say to
22 its employees, hey, go to Bergan, you'll get a
23 better discount or --

24 A. Correct. You'll have less out-of-pocket
25 expenses.

1 Q. Okay. And that would be an example of
2 steerage.

3 A. Correct.

4 Q. Now, just to make -- I think you said a
5 larger group would be between 1500 and 2,000
6 employees accessing. Do you make a distinction
7 between employees versus members of the plan?

8 A. Not necessarily, because it's number of
9 people that are going to be using the services.

10 Q. Okay. So if you have 600 employees but
11 with their families you have 1500 members --

12 A. Right.

13 Q. -- you would consider that a large group?

14 A. A larger group, yes.

15 Q. You also mentioned, I think, in your
16 experience that there are direct contracts with
17 employers.

18 A. Uh-huh, correct.

19 Q. That's different than a PPO agreement;
20 correct?

21 A. Yes, it is. Yes.

22 Q. What is a direct contract?

23 A. Direct contract is a contract that exists
24 directly between the employer and the provider.

25 Q. Okay.

1 A. So it essentially eliminates the
2 middleman.

3 Q. The next paragraph on Page 6, which is
4 the second full paragraph, you talk about
5 reference-based pricing. And about --

6 A. Correct.

7 Q. -- four lines down you write, In no
8 situation was a reference-based price accepted
9 unless it was accompanied by a contract negotiated
10 in advance.

11 A. Correct.

12 Q. Okay. Tell me about your experience with
13 that.

14 A. I mentioned that there was the situation
15 where a TPA came in and had put forward -- tried
16 to do reference-based pricing, and there was no
17 contract. We essentially rejected all of those --
18 refused -- essentially refused any claim that was
19 presented at the hospital or a clinic. And so
20 when that happened, obviously members were put at
21 risk because they were then billed for the entire
22 service. The employer was contacted and explained
23 that they -- that because of that, they had been
24 sold a plan that had no network and that their
25 members were substantially at risk and the

1 employer was substantially at risk.

2 And until that employer was able to
3 move their employees to a plan that had a network,
4 we offered to provide -- to agree to do a
5 short-term contract. We agreed upon a price so it
6 really wasn't a reference price. But we agreed
7 upon a price with that TPA to accept a specific
8 payment. And essentially what -- because what we
9 said to the employer is that no employer would do
10 that to their employees because you leave the
11 employee at such risk.

12 Q. Do you remember who the TPA was? I can't
13 remember if I asked you.

14 A. Yeah, and I said I don't remember. I
15 just know they were from out of state.

16 Q. Do you know if the TPA was using a vendor
17 to assist them with their reference-based plan?

18 A. That I don't know.

19 Q. Do you have any experience with AMPS,
20 Advanced Medical Pricing Solutions?

21 A. I don't.

22 Q. How was the situation resolved that you
23 mentioned with Avera on these reference-based
24 claims?

25 A. Again, we did a short-term agreement

1 until the -- until the employer could move their
2 employees to an insurance organization that had a
3 full network.

4 Q. And do you know who -- so they went to a
5 PPO then?

6 A. They went to a PPO, yeah.

7 Q. Okay. And so in the interim you had a
8 direct contract with the TPA or the employer?

9 A. The employer.

10 Q. Do you know what -- did that provide a
11 discount to the employer?

12 A. Absolutely.

13 Q. Do you remember what percent that was?

14 A. I can't say specifically. I can't say
15 specifically what it was.

16 Q. What's your best estimate of what the
17 range --

18 A. My best estimate --

19 MS. BAUMERT: Objection, exceeds
20 the scope of the report but --

21 A. Yeah, yeah.

22 Q. You can answer.

23 A. I don't want to guess so --

24 Q. You don't have an estimate of what the
25 settlement was?

1 MS. BAUMERT: Objection; asked and
2 answered, speculation.

3 A. I'm not going to guess.

4 Q. Okay. On the bottom of Page 6 you write,
5 It is highly unusual for claims to be unresolved
6 for two or three years after participants incurred
7 them, as they were for the CVA plan for plan years
8 2015 and 2016 because so many providers rejected
9 payment on claims under the RBR program. Did I
10 read that correctly?

11 A. Correct.

12 Q. How many providers rejected payment on
13 claims under the RBR program?

14 A. Of the claims that I reviewed -- and I
15 believe what I sent in were the -- what did I
16 have, 14 -- 14 claims, that I reviewed, and I
17 viewed those as rejected claims because they were
18 unresolved. And so that was my definition of a
19 rejected claim.

20 Q. Okay. So there are 14 instances that you
21 reviewed through your engagement?

22 A. Correct.

23 Q. And you've charged \$32,900 to review
24 those 14 claims?

25 A. That's not what all of that involves.

1 There were other things that I have done with
2 that, so there are other things that are included
3 in that.

4 Q. And what else have you done?

5 A. Some of it was some documents that I
6 reviewed, other is document preparation.

7 Q. What documents did you review?

8 A. I reviewed the AMPS document.

9 Q. What do you mean by the AMPS document?

10 A. The -- I believe that's what it's called.
11 Actually the -- this one (indicating), the --

12 Q. The RBR program services agreement?

13 A. Correct.

14 Q. Okay.

15 A. I reviewed the summary plan description,
16 the employee summary -- the plan document and
17 summary plan description. I also -- and then
18 referred to that as I was going through the
19 individual claims. And then as I was going
20 through each one of the claims, I would then -- I
21 pulled each of those claims and did a
22 reconciliation on each one of those claims.

23 Q. Okay. Looking at Exhibit 191, most of
24 your entries, is it fair to say, refers to claims
25 reviewed.

1 A. Correct.

2 Q. Okay. There are some entries, for
3 example, on January 20, 2019, where you say claim
4 review, slash, prep, and you billed \$6300 for that?

5 A. Correct.

6 Q. What prep did you do?

7 A. What I did there was to go back and
8 essentially -- when I first -- the first time that
9 I did the claim review, I had not documented all
10 of the dates of service. And so I went back
11 through each one of those and documented the date
12 of service and did that in preparation for this
13 meeting.

14 Q. Okay. So you did that to prepare for
15 this deposition?

16 A. Correct.

17 Q. And then January 24, 2019, you say
18 document prep and you billed \$8,750 for that.

19 A. That was a combination of doing the
20 write-up, the detail for each one of the
21 individual claims. And part of doing that, to
22 make sure that it was completely accurate, I went
23 back through and essentially reworked each and
24 every one of those claims.

25 Q. How did you rework each claim?

1 A. I explain in here how I went through the
2 process. And so essentially with each claim I
3 started by looking at that claim. And when I did
4 so, I would start by making sure that the claim
5 was accurate by looking at the billing, comparing
6 the -- what was being billed, compared that to a
7 CPT manual to be sure that the right codes were
8 billed.

9 And then I would look to be sure that
10 when I looked at it -- here, let me get back to my
11 documents so I can do this a little more
12 succinctly. So then after I took it through the
13 CPT code, then I would go through and make sure
14 that all of the hospital billing information was
15 right. Oftentimes had to go back to the SPD. And
16 then I would -- went through my individual notes
17 and the conversations that I had, most times with
18 Kutak Rock, relative to the recommendations that I
19 had made. Determined the source of what generated
20 that, did the document come directly to Kutak
21 Rock, was it a delinquency notice that caused the
22 contact, was it something that came from a
23 collection agency, did it come directly from the
24 member? So what was the source of that so that I
25 could detail all of that in the write-up.

1 Q. So you have notes with your conversations
2 with Kutak Rock?

3 A. And those I actually included here in the
4 summary information.

5 Q. The actual notes are included or you just
6 mean you retyped them?

7 A. I retyped them --

8 Q. Okay.

9 A. -- yeah.

10 Q. Did you have handwritten notes or what do
11 you have?

12 A. Mostly just something that I wrote on the
13 claim that said, you know, recommend 20 to 25
14 percent discount. Yeah.

15 Q. Did you prepare any -- other than this
16 report, when you were working with Kutak did you
17 prepare any recommendations in writing to them?

18 A. I did not.

19 Q. Okay. It was all oral communications?

20 A. Yes.

21 Q. How about any E-mails with Kutak, did you
22 ever E-mail them?

23 A. What I E-mailed -- information that I
24 E-mailed is included in the report. Yeah.

25 Q. But not the actual E-mails. I guess what

1 I'm saying --

2 A. Oh, no. No.

3 Q. Is it fair to say that the entry on
4 Exhibit 191 for January 20 and January 24, those
5 two entries are the time you spent preparing your
6 expert report?

7 A. Yes.

8 Q. Did you keep any records as to how long
9 you spent looking at any of the individual 14
10 claims that you looked at?

11 A. Yes.

12 Q. Okay. How would you --

13 A. Yeah.

14 Q. -- would you record that time?

15 A. On the -- how would I record it?

16 Q. Yeah.

17 A. Oh, I -- I keep track of the amount of
18 time that I spend for each of my clients. Each
19 day that I do the work for that client I record it
20 on the specific day and the amount of -- on a
21 calendar and the amount of time that I worked for
22 that client. And then I would indicate also which
23 of the claims I worked on. So if I worked on,
24 say, a patient W.S., that first patient, I would
25 indicate the number of hours that patient took and

1 have that recorded on the calendar.

2 Q. Okay. Did you bring that information with
3 you?

4 A. I did not.

5 Q. Okay. But you have it available if --

6 A. I do.

7 Q. Okay. So there is a record somewhere of
8 how much time you spent on each of these 14
9 claims?

10 A. Correct.

11 MR. THALKEN: And, Michaelle, we
12 would like to see that.

13 MS. BAUMERT: I don't have it so --

14 MR. THALKEN: Well, she just said
15 she has it.

16 MS. BAUMERT: But I don't think
17 it's proper to issue the notice with a
18 duces tecum aspect to it. We'll look
19 into that, we can talk about it.

20 MR. THALKEN: Okay. She's got a
21 record --

22 MS. BAUMERT: It's important to you
23 to know how much time she spent on
24 Willis Smith's claims, for instance?

25 MR. THALKEN: Yes.

1 MS. BAUMERT: Okay. We'll look
2 into that. I -- I think we're going to
3 have probably an issue.

4 MR. THALKEN: Okay.

5 Q. Well, you understand that CVA is seeking
6 the fees that you -- that you charged the plan for
7 consulting on these claims --

8 A. I --

9 Q. -- as an element of damage in this
10 lawsuit; correct?

11 A. I understand that. I would also -- well,
12 I can talk to Michaelle about it, because that
13 information is included with all other information
14 for my other clients. So it's not -- it's not
15 segregated from -- it's not something that is held
16 for this client and this client alone.

17 Q. Right. And I'm not interested in what
18 you're doing for other clients, but you're saying
19 there is a record of how much time you spent on
20 each of the individual 14 claims that you --

21 A. Correct.

22 Q. -- looked at.

23 A. But I'm also saying that if you want to
24 see that, there will be a certain amount of work
25 incurred to go through and isolate that and block

1 all of that out with all of my other clients. And
2 I would question whether or not that would be
3 worth it.

4 Q. Okay. Page 7 of your report, the top of
5 the page. Are you there?

6 A. I am.

7 Q. All right. In addition, and then I think
8 it's a typo, it just says B. Should that say by?

9 A. Yes, uh-huh.

10 Q. In addition, by not having signed
11 provider contracts in place before the RBR program
12 was implemented, the plan costs increased at a
13 minimum of 20 percent, up to as much as 60 percent
14 of --

15 A. Yeah.

16 Q. -- total claim cost, for an average 45 to
17 50 percent of total claim cost.

18 A. Yeah.

19 Q. This figure is based on other savings
20 reports carriers in the market provide when
21 quoting large self-funded groups.

22 A. Yep.

23 Q. Okay. Large third-party administrators
24 can yield over a 50 percent discount on inpatient
25 services and a 40 to 45 percent on professional

1 services.

2 A. Uh-huh.

3 Q. Outpatient services will be close to the
4 inpatient range or higher depending on the type of
5 reimbursement in place.

6 A. Correct.

7 Q. Have I read that correctly?

8 A. Yes.

9 Q. Tell me what your basis is for saying
10 that plan costs increased a minimum of 20 percent.

11 A. What I -- what I did was, if you look at
12 the plan costs and it -- for years '15, '16 and
13 the run-out for '17 and you look at the provider
14 savings based on the billed charges, that reflects
15 a seven percent discount. And --

16 Q. Just to -- we're talking about the CVA
17 plan here. This is --

18 A. Correct.

19 Q. -- actual --

20 A. I looked at the actual claims.

21 Q. Okay.

22 A. And so that reflected a seven percent
23 discount. So essentially the differential should
24 have been at least, I was thinking, somewhere in
25 that 25 percent range. So that's where I came up

1 with that minimum of 20. And then up to as much
2 as 60 percent, I calculated that based on -- if
3 you look at a typical spend for health care in
4 inpatient and outpatient and you split that 60/40
5 with your inpatient claims these days being 40
6 [sic] percent of your total spend, and that's a
7 ballpark average, and then your outpatient being
8 40 percent of your total spend. And then I
9 essentially -- and I couldn't do that specifically
10 with their claims to get what was their inpatient,
11 what was their outpatient spend. I didn't take
12 the time to do that. But I just ballparked that
13 based on the total claims figure. And so then I
14 applied the percentages of the -- what I see for
15 discounts when groups are quoted. And that's how
16 I came up with those numbers.

17 Q. Did you draw any distinction between
18 hospital and facility claims versus nonhospital or
19 facility claims when doing that analysis?

20 A. I did. And that's the difference here
21 because the -- the discounts I used, the 50
22 percent on the inpatient and then I used 45
23 percent on the professions.

24 Q. So your -- your assumption there is that
25 a typical plan will get a 50 percent discount on

1 inpatients?

2 A. On inpatient.

3 Q. And a 45 percent discount on --

4 A. On the professional side, yeah. And I
5 based that on what I see groups being quoted
6 today.

7 Q. So how does that accord with your opinion
8 that if they had -- if there was a PPO in place
9 you'd get a 20 to 25 percent discount?

10 A. Your -- if you have a group that's being
11 quoted, those quotes would be based on the network
12 that is supporting them. And that would be a PPO
13 network that would be supporting that quote. So
14 you have an insurance company that is giving a
15 quote to an employer. That insurance company
16 bases those quotes on the PPO network that is
17 supporting it.

18 Q. And that would be a 20 to 25 percent
19 discount typically?

20 A. It -- the quotes I have seen of late, of
21 which there were -- when I wrote this I had just
22 seen three quotes that had these exact numbers.

23 Q. Of 40 and --

24 A. Of 50 and 40 to 45 percent on the hospital
25 and the professional side.

1 Q. Who are those quotes from?

2 A. The one -- I saw two from Wellmark and
3 one from Dakota Care.

4 Q. How many employees does Walmart have?

5 A. No, no, no, it wasn't from -- Wellmark
6 gave --

7 Q. Oh, Wellmark. I thought you said Walmart.

8 A. No, no, no. I'm sorry. Wellmark, yeah.
9 It was from Wellmark.

10 Q. All right. My --

11 A. Yeah. No, no, no.

12 Q. So Wellmark quoted -- you've seen two
13 quotes from Wellmark and one quote from Dakota Care?

14 A. Correct.

15 Q. To who are those quotes issued?

16 A. I -- I don't feel comfortable saying who
17 they were issued to, but they were issued to
18 groups within this marketplace, because I think
19 who they were issued to is confidential.

20 Q. Well, you're basing your opinion on these
21 percentages, but you won't tell me who the employer
22 was?

23 A. I'm sorry, that is considered proprietary.

24 Q. How many employees did they have?

25 A. The -- one of them had 32- -- the

1 Wellmark, one was at 3200 employees. Another was
2 at 1600 employees. The Dakota Care one was --
3 that was around the 3200 mark as well.

4 Q. So those employers were much larger than
5 CVA.

6 A. Yes, yeah.

7 Q. But you're assuming that CVA would have
8 got the same discount as those larger employers?

9 A. I think that if, you know -- I think that
10 it's possible that they could have gotten that
11 same kind of discount.

12 Q. Do you know?

13 A. I can't say specifically, but I do think
14 it's possible.

15 Q. It's possible they could have got less
16 than that discount.

17 A. It is possible.

18 Q. Do you know how many balance bills CVA
19 had to negotiate?

20 MS. BAUMERT: Objection, exceeds
21 the scope of the report.

22 A. I don't.

23 Q. You looked at a total of 14 claims?

24 A. I reviewed specifically 14 claims.

25 Q. And how -- how many employees did the

1 plan have?

2 A. I don't know the -- I don't know the
3 exact number.

4 Q. More than 500?

5 A. Yes, yep.

6 Q. And you're looking over a period of two
7 years, 2015 and 2016?

8 A. Correct.

9 Q. And maybe it's not accurate to say
10 claims, it's 14 patients.

11 A. 14 patients, correct.

12 Q. Is that --

13 A. Yeah, because there were multiple claims
14 with -- yeah, there were multiple claims for these
15 patients.

16 Q. Based on your review, did you determine
17 whether the claims were submitted accurately?

18 MS. BAUMERT: Objection to form of
19 the question. If you understand the
20 question, you can answer it. If you
21 don't understand it, you can tell him.

22 A. Your question to me is, were the claims
23 submitted accurately from the providers?

24 Q. Yes.

25 A. In -- in most cases there -- there was --

1 there were a couple of situations where I suggested
2 that Kutak Rock go back and get additional
3 information.

4 Q. And is that what you mean on Page 7 of
5 your report under C, Methodology, where it says, I
6 reviewed claim submissions for accuracy and plan
7 documents to determine if claims being filed were
8 for covered benefits and whether claims were
9 submitted accurately?

10 A. Correct.

11 Q. You're talking about the provider
12 submitting claims.

13 A. Correct, yes.

14 Q. And you found a couple situations where
15 you thought you needed some more information.

16 A. Correct, yep.

17 Q. Did you determine in those situations
18 whether the claims were submitted accurately?

19 A. I did not always see the back-end process
20 so I don't know the answer to that.

21 Q. Okay. Was there ever any information
22 that you requested that you were not provided?

23 A. Not to my knowledge.

24 Q. Okay. So let's look at Page 9 and we'll
25 kind of look at some individual patients.

1 A. Okay.

2 Q. The first one is patient W.S., is how you
3 have it listed?

4 A. Uh-huh.

5 Q. And then let's go to the second paragraph
6 under 1 there, four lines down says, I determined
7 the rates being charged were over market for the
8 services being provided.

9 A. Yep.

10 Q. So you determined that the hospital was
11 overbilling for the services it provided to W.S.;
12 correct?

13 A. Right.

14 MS. BAUMERT: Objection, form of
15 the question.

16 Q. And you recommended that the Advanced
17 Imaging MRI be lowered by 60 percent.

18 A. Uh-huh.

19 Q. Is that yes? You have to say yes or no
20 for --

21 A. Yes --

22 Q. -- the court reporter.

23 A. -- I did, uh-huh. Sorry.

24 Q. No problem. And then you recommended
25 that Saunders Medical Center be discounted at 50

1 to 55 percent; correct?

2 A. Correct.

3 Q. And you recommended negotiating a 60
4 percent discount and settling for 50 percent with
5 Bryan --

6 A. Correct.

7 Q. -- correct?

8 A. Correct.

9 Q. And do you know what the result of your
10 recommendations were, do you know if they were
11 accepted by the hospitals on patient W.S.?

12 A. I -- I do not.

13 Q. And then look -- well, looking back at
14 your report on the date of services report --

15 A. Uh-huh.

16 Q. -- that's attached to Exhibit 190, is
17 this a list of all the individual claims that you
18 looked at for each patient?

19 A. Yes, it is.

20 Q. Okay.

21 (Deposition Exhibit 192 was marked.)

22 Q. Ms. Reed, I'm handing you what's been
23 marked as Exhibit 192. And I'll represent to you
24 this is a document that was produced to us in
25 discovery by CVA.

1 A. Okay.

2 Q. I'm going to refer you to Page 4 of
3 Exhibit 192. There's an entry for plan participant
4 for Willis Smith. Do you see that?

5 A. I do.

6 Q. Is that W.S.?

7 A. It is.

8 Q. Okay.

9 MS. MITCHELL: Tim, do you have a
10 Bates range for this document?

11 MR. THALKEN: No. This is -- this
12 is the attachment to an interrogatory
13 answer, I believe.

14 MS. BAUMERT: Attachment A, yeah.

15 MR. THALKEN: Yeah, Attachment A
16 and B and then -- I think I E-mailed it
17 to you earlier.

18 MS. MITCHELL: Great. Thanks.

19 Sorry.

20 Q. So at least with respect to Exhibit --
21 excuse me, with respect to Patient 1, Willis
22 Smith, you don't know whether this is accurate as
23 to what the final settlement was with him? You
24 weren't involved in the back-end, as you put it?

25 A. I was not.

1 Q. Okay. But you would expect a settlement
2 of, for example, 60 percent on the Advanced
3 Imaging?

4 A. Correct.

5 Q. Okay. And you would expect that Saunders
6 County would accept 50 to 55 percent?

7 A. Correct.

8 Q. And you would expect that Bryan would
9 accept a 60 percent discount.

10 A. Yes, somewheres close to that for all of
11 them.

12 Q. Patient Number 2, look at Page 10 of your
13 report. This is patient R.G.?

14 A. Uh-huh.

15 Q. And then if you would refer back to your
16 date of service report under Patient 2 --

17 A. Yes.

18 Q. -- the billed charges on Patient R.G. are
19 \$239.56?

20 A. Yes. Okay.

21 Q. Okay. And you recommended a 20 to 25
22 percent discount off that \$239 bill?

23 A. I did.

24 Q. How much time did you spend reviewing
25 that bill?

1 A. I would not have spent much time
2 reviewing that bill.

3 Q. Do you think you spent more than 15
4 minutes reviewing it?

5 A. I did -- I would have because of the
6 information -- because of how the information came
7 in.

8 Q. Have you completed your answer or --

9 A. Yes.

10 Q. Okay. So you're recommending a 25 percent
11 discount on a \$239 bill.

12 A. Uh-huh.

13 MS. BAUMERT: I think you have to
14 answer yes. Sorry.

15 A. Yes.

16 Q. So that would be a savings of about \$60
17 off that bill?

18 A. Yes.

19 Q. You charged more than \$60 to review this,
20 didn't you?

21 A. Yes.

22 Q. And then a law firm, Kutak Rock, also
23 assisted you with this?

24 A. I would have given that recommendation to
25 them, yes.

1 Q. So Kutak Rock billed some time to resolve
2 this -- to try to get a \$60 discount?

3 A. I would assume so.

4 Q. Would you agree that the fees that you
5 charged and that Kutak charged exceeded the amount
6 of savings that you ultimately achieved on this
7 claim?

8 MS. BAUMERT: Objection to the form
9 of the question, calls for speculation,
10 exceeds the scope of the report. You
11 can answer if you understand.

12 A. Every time that something was done, it
13 was really done for the best interest of the
14 member and for -- for the employer. That was our
15 intent.

16 Q. So even -- so you could have spent
17 \$10,000 consulting on this claim that saved \$60
18 and that would have been in the best interest?

19 MS. BAUMERT: Objection to the form
20 of that question and also exceeds the
21 scope of the report, speculation.

22 A. No, that was not the point.

23 Q. Okay. Well, you're saying whatever you
24 did was in the best interest of the member; right?
25 Is that -- whatever you did was in the best

1 interest of the member?

2 A. That was always our intent was -- was to
3 do what was right for the member and for the
4 employer.

5 Q. What about the plan, did you try to do
6 what's in the best interest of the plan?

7 MS. BAUMERT: Objection to the form
8 of the question.

9 A. We were --

10 MS. BAUMERT: Exceeds the scope of
11 the report.

12 A. Yeah.

13 MS. BAUMERT: You're trying to make
14 distinctions between employer and plan.

15 A. Yeah.

16 Q. What's your answer?

17 A. To me the employer and the plan are one
18 in the same.

19 Q. Okay. The work you did in reviewing
20 these -- these 14 patient claims -- again, I don't
21 want --

22 A. Yeah.

23 Q. -- I don't want to suggest that it's only
24 14 claims, but the claims of these 14 patients, is
25 that essentially the same work that AMPS was

1 supposed to be doing for the plan?

2 MS. BAUMERT: Objection; exceeds
3 the scope of the report, speculation,
4 form.

5 A. I don't know.

6 Q. Well, wasn't AMPS reviewing claims to
7 determine what amount should be paid on them?

8 A. I don't know.

9 MS. BAUMERT: Objection; form,
10 speculation and exceeds the scope of the
11 report.

12 Q. You don't know what AMPS was doing?

13 MS. BAUMERT: Same objections.

14 A. Not specifically.

15 Q. So then you have no criticisms of
16 anything that AMPS did in this case; correct?

17 A. I -- yes, I do have criticisms of that
18 process.

19 Q. But you don't know what they were doing,
20 so what's your criticism based on?

21 A. My criticism is based on what I -- what I
22 read in the document, and that is that there was
23 balance billing to the member.

24 Q. And how -- how is that a criticism of
25 AMPS?

1 A. It's a criticism of the process in that
2 if there were contracts in place, there would be
3 no balance billing to the member. So that is
4 really more related to the reference-based
5 pricing.

6 Q. You don't like reference-based pricing.

7 MS. BAUMERT: Objection; form,
8 exceeds the scope of the report.

9 A. Reference-based pricing is an unfair
10 practice to a -- to an employer and to a member
11 because -- and to a provider. All the way around,
12 it puts everyone at risk in that a provider
13 doesn't know what they're going to be paid, an
14 employer does not understand what their exposure
15 is for their health insurance expenses, and it
16 puts a member at risk to be balance billed.

17 Q. So if an employer entered into a contract
18 for a reference-based reimbursement system that
19 authorized balance billing, would you say that's a
20 breach of its duty to -- to the plan?

21 MS. BAUMERT: Exceeds the scope of
22 the report, speculation, form.

23 A. It would strictly be an opinion, and it's
24 not -- it would be a judgment.

25 Q. That's what I'm asking for.

1 A. Yeah. It would be a judgment --

2 MS. BAUMERT: Same objections.

3 A. -- and I'm not going there.

4 Q. You're not going to answer?

5 A. I'm not going to make that judgment.

6 Q. Well, you reviewed the RBR program
7 services agreement, didn't you? It's one of the
8 documents earlier you said you looked at?

9 A. I did, I did review that.

10 Q. Didn't CVA sign that document?

11 MS. BAUMERT: Objection; form,
12 scope, exceeds the scope of the report.

13 A. Yes, they did sign it.

14 Q. Was that a mistake on CVA's part to sign
15 the RBR program services agreement?

16 MS. BAUMERT: Same objections;
17 exceeds the scope of the report,
18 speculation, form.

19 A. Yeah.

20 THE REPORTER: Excuse me? You said
21 yeah?

22 THE WITNESS: Oh, I'm sorry.

23 MS. BAUMERT: Were you saying yeah
24 to you agree with my objections --

25 THE WITNESS: No.

1 MS. BAUMERT: -- or, yeah, you --

2 THE WITNESS: Yes, I agree with her
3 objection.

4 MR. THALKEN: Well --

5 MS. BAUMERT: Maybe you should read
6 back the question.

7 MR. THALKEN: -- you're not a lawyer,
8 so I'd --

9 THE WITNESS: Yeah, exactly.

10 MR. THALKEN: -- like you to answer
11 my question and not -- and not agree
12 with her objection.

13 MS. BAUMERT: I didn't think she
14 really intended --

15 THE WITNESS: Yeah.

16 MS. BAUMERT: -- to do that.

17 THE WITNESS: No, I did not.

18 MS. BAUMERT: We just want to
19 clarify the answer to the question, so
20 maybe she should read back the question.

21 MR. THALKEN: Yes.

22 THE WITNESS: So could you read
23 back the question for me? Thank you.

24 MS. BAUMERT: She's typing.

25 (The last question was read by the court

1 reporter.)

2 MS. BAUMERT: All the same
3 objections. You can go ahead and answer
4 if you have an opinion.

5 A. I don't know the answer to that.

6 Q. But it would be a mistake for an employer
7 to offer any program -- or excuse me, to offer any
8 reference-based reimbursement program in your --

9 MS. BAUMERT: Same objections;
10 exceeds the scope of the report,
11 speculation, form.

12 A. Again, I don't -- I'm not going to
13 speculate on that.

14 Q. So you have no opinion as to whether an
15 employer should ever enter into a reference-based
16 reimbursement agreement.

17 MS. BAUMERT: Same objections,
18 asked and answered.

19 A. I don't believe it is a fair option for
20 employees.

21 Q. And so if an employer entered into an
22 agreement, a reference-based reimbursement
23 agreement, that would not be a fair option to the
24 employees in your view.

25 MS. BAUMERT: Same objection;

1 exceeds the scope of the report, form,
2 foundation, speculation.

3 A. I think I've answered that question.

4 Q. I don't think you have.

5 A. I -- I believe I have. I think it's --
6 my opinion is it's -- it is -- it is -- it's not a
7 practice that is seen in this market. And my
8 experience in working with employers, if they
9 understand that is what is going to happen to
10 their employees, it's not a plan they would choose.

11 Q. Understand what is going to happen to the
12 employees?

13 A. That they're going to be balance billed.

14 Q. So if an employer was advised that
15 employees were going to be balance billed and
16 still entered into an RBR services agreement,
17 would that be a mistake by the employer?

18 MS. BAUMERT: Exceeds the scope of
19 her report --

20 THE WITNESS: Yeah.

21 MS. BAUMERT: -- speculation,
22 foundation, form.

23 THE WITNESS: Yeah.

24 A. And, again, I -- I can't speak to that
25 because that employer in that situation needs to

1 make their own decisions.

2 Q. And CVA made a decision here, didn't it?

3 A. I don't know that.

4 MS. BAUMERT: Objection; exceeds
5 the scope of the report, speculation.

6 MR. THALKEN: Exceeding the scope
7 of the report is not an objection.

8 MS. BAUMERT: It actually is; it
9 exceeds the scope of her report.

10 Q. She has given opinions that RBR is not
11 appropriate in this market; is that correct?

12 A. That's correct.

13 Q. Okay. But CVA entered into an RBR
14 program services agreement.

15 MS. BAUMERT: Same objections.

16 Q. Didn't it?

17 A. They did. And, again, I can't speak to
18 the specific circumstances of that.

19 Q. Okay. Page 11 of your report, Patient 3
20 which is patient J.K.

21 A. Uh-huh.

22 Q. And is that listed on your date of
23 service report as well under J.K.?

24 A. Page 11. Patient 3; right?

25 Q. Correct.

1 A. Oh, okay. Yes.

2 Q. So -- and then I want to refer you to
3 Exhibit 192 which is the --

4 A. Okay.

5 Q. -- interrogatory answer. On Page 2 of
6 Exhibit 192 at the bottom, there's an entry for a
7 patient Jonathan King?

8 A. Uh-huh.

9 Q. Is that J.K.?

10 A. It is.

11 Q. Okay. Tell me what you learned about
12 patient J.K.

13 A. Jonathan King, in addition to the
14 information that is -- that is written there, he
15 had -- what was sent to us was that the entire
16 balance for the claims that we removed were a
17 number of lab tests that were due to a transplant.
18 It was a bone marrow transplant. There was a
19 collection notice that was sent that reflected the
20 total amount that was due.

21 The -- one of the things that we did
22 not have was the transplant agreement. And
23 without that transplant agreement, we were unable
24 to tell whether or not those lab tests should have
25 been included within the transplant period, which

1 is -- which is typical that lab tests would be
2 covered within a transplant period. But without
3 that agreement, we weren't able to tell that.

4 Q. And this dispute, as I look at Exhibit
5 192, is over \$986?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yeah. Yes, it was.

9 Q. Okay. Do you know how much time you
10 spent reviewing this file?

11 A. I can't say specifically how much time I
12 spent on it. I do know that he had -- yeah,
13 again, I don't know the specific amount of time.
14 I do know that I went back through all of the
15 claims trying to determine whether or not we could
16 find the transplant, the original transplant claim
17 to match the transplant period with the billing on
18 the labs so that we could try to avoid having to
19 pay the billing at all.

20 Q. And in looking at Mr. King's claim you
21 write, I determined the rates being charged were
22 over market for the services being provided?

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. That's a yes. Yes.

1 Q. So the hospital was overcharging the plan;
2 correct?

3 A. For lab services, yes.

4 Q. And you recommended a 35 percent discount?

5 A. Correct.

6 Q. But it looks like on Exhibit 192 that the
7 plan just paid the full amount, \$986.

8 MS. BAUMERT: Can you give us a
9 reference to what you're talking about?

10 MR. THALKEN: Sure, Page 2 of
11 Exhibit 192, Jonathan King.

12 THE WITNESS: Okay.

13 Q. It says amount paid by CVA --

14 A. Uh-huh, right.

15 Q. -- 986?

16 A. Right.

17 Q. So they just paid the full bill.

18 A. Yes. If they were unable to get the
19 provider to agree to the requested amount, then,
20 yes, they would have to pay more.

21 Q. I want to go back to Number 2 on your
22 report again, Page 10. Sorry. Patient R.G.

23 A. Okay.

24 Q. It says, The claim was sent to his
25 current health provider instead of TBG.

1 A. Correct.

2 Q. So the providers -- or the provider sent
3 the bill to -- didn't send the bill to TBG
4 originally; is that accurate?

5 A. I can't say that for sure because that
6 information was provided -- that information was
7 provided by -- he sent that in -- yes, he sent
8 that in in a note that -- the note that he sent
9 requesting assistance. So that was information
10 that came from the patient.

11 Q. Because it says UMR denied the claim on
12 April 2, 2017 --

13 A. Yep.

14 Q. -- correct? And UMR was not the TPA for --

15 A. Correct.

16 Q. -- 2016 claims --

17 A. Yep.

18 Q. -- right?

19 A. Correct. But, again, that's -- that was
20 the information he gave us so I can't say that
21 specifically.

22 Q. Okay. All right. Back to Page 11,
23 Number 4, Patient L.M. Is that Lucas Meyer?

24 A. It is.

25 Q. Tell me what was going on on this claim

1 or this patient.

2 A. Lucas Meyer -- Lucas Meyer used a service
3 called Valley of Hope. And with this particular
4 member there were -- it involved both covered and
5 noncovered services. Valley of Hope has a -- a
6 residential, if you will, and a -- a continuing
7 care package. So in this situation Lucas Meyer
8 had signed a -- a form indicating that if there
9 were noncovered services that he would be
10 responsible, so he signed a waiver.

11 Because specifically within the plan
12 document it outlines -- it outlines that room and
13 board is not a covered service. And so went
14 through and identified letters that -- or the
15 waiver that he had signed. Actually the facility
16 provided letters to -- to him that actually he
17 then -- I believe he sent it to Kutak Rock. I'd
18 have to go back and check that specifically. But
19 we were able to do a reconciliation to determine
20 what the patient liability was, what the plan
21 liability was and work through that and determine
22 what he was responsible for, what the plan was
23 responsible for.

24 Q. And Valley Hope, is that a drug and
25 alcohol rehab center?

1 A. I believe it is, yes.

2 Q. And the total charges for the services
3 were \$12,628.53?

4 A. Correct.

5 Q. And then you have on Page 12, you say
6 plan liability is \$9,527.64.

7 A. Correct, yep.

8 Q. What -- how did you determine what the
9 plan liability was?

10 A. Based on -- based on the covered charges,
11 based on what the plan document said that it would
12 cover, minus the member responsibility in terms of
13 his -- he had a deductible there that he needed to
14 cover and then also the patient liability -- yeah,
15 his deductible was the 627.88, 793.01 was the
16 coinsurance. And then there had already been a
17 payment that had been made through TBG.

18 Q. So TBG had paid --

19 A. 1850.35.

20 Q. And do you know if that payment was made
21 at the recommendation of AMPS?

22 A. I do not know that.

23 Q. So you don't know if this went through an
24 RBR process --

25 A. I don't --

1 Q. -- review?

2 A. -- no. And then Lucas was responsible
3 for the balance above what was paid by the
4 insurance.

5 Q. Do you know whether this claim ultimately
6 settled?

7 A. I do not.

8 Q. You had recommended a 20 to 25 percent
9 discount?

10 A. Correct.

11 MS. BAUMERT: Can we go off the
12 record for a second?

13 MR. THALKEN: Uh-huh.

14 (A discussion was held off the record.)

15 Q. Patient Number 5, is that Amy Eisenhower?

16 A. It is.

17 MR. THALKEN: And that's

18 E-i-s-e-n-h-a-u-e-r, for the court
19 reporter.

20 Q. All right. So on Page 13, the middle --
21 or the second paragraph you say, The charge of
22 1350 was for an imaging service.

23 A. Right.

24 Q. Based on the prices published on the
25 provider's website, the service was overpriced.

1 The provider had published prices on their website
2 for similar imaging services for \$499; correct?

3 A. Correct.

4 Q. So the provider was overcharging the plan.

5 A. Correct.

6 Q. For a service that they were advertising
7 on their website cost \$499, the provider was
8 charging the plan 1350; correct?

9 A. Correct.

10 Q. And TBG you say had -- excuse me. You
11 say that TBG had already paid \$526.14; correct?

12 A. Correct.

13 Q. And that's a reasonable amount for that
14 service in your view; correct?

15 A. Correct.

16 Q. But the provider wanted more money.

17 A. Correct.

18 Q. And balance billed the patient for
19 \$823.86; right?

20 A. Correct.

21 Q. And then you say, After some negotiating,
22 Northwest Nebraska Imaging accepted \$475 to
23 resolve the outstanding balance.

24 A. Correct.

25 Q. So the total payments made on this \$1,350

1 bill was \$1,001.14?

2 A. Fourteen cents, correct.

3 Q. But that's more than the fair price.

4 A. Correct. The -- the -- the amount that
5 was shown on their website was something that I
6 had identified when I was reviewing the claim
7 because I wanted -- when I reviewed the claim, I
8 went in and looked at -- looked at their provider
9 site because I wanted to understand -- I was
10 looking for their place of service to determine
11 what type of provider they are, because that too
12 will affect the type of discount that they're
13 willing to give, which is how I found the \$499
14 price reduction.

15 Q. So at the end of the day, the plan saved
16 about, call it, \$350 on this --

17 A. Correct.

18 Q. -- claim? Did you spend more than an
19 hour working on this claim?

20 A. Probably not.

21 Q. And you were charging \$350 an hour; right?

22 A. Correct.

23 Q. Kutak Rock was also working on this claim?

24 MS. BAUMERT: Objection; exceeds
25 the scope of the report, foundation,

1 form.

2 Q. Did Kutak Rock work on this claim?

3 A. I provided them information.

4 Q. Okay. Do you think that between your
5 consulting fees and Kutak's fees, those fees
6 exceeded the amount of savings ultimately
7 achieved?

8 MS. BAUMERT: Same objections.

9 A. I don't -- I don't know the answer to
10 that.

11 Q. You don't -- you don't think more than
12 \$350 in consulting and legal fees was spent on
13 resolving this claim?

14 MS. BAUMERT: Same objections.

15 A. Yeah, I don't -- I don't know what that
16 arrangement is.

17 Q. Well, you know what your arrangement is.

18 A. I do, but I don't know what theirs is.

19 Q. But you're charging \$350 an hour.

20 A. Correct.

21 Q. And at the conclusion of all your work,
22 the plan saved \$350.

23 A. Correct.

24 Q. But your notes will show us how much time
25 you actually spent on this claim.

1 A. Correct.

2 Q. Next one is 6, Patient J.L.

3 A. Uh-huh.

4 Q. Is that Jodi Lamprecht?

5 A. Yes.

6 Q. Tell me what you did with respect to her
7 claim.

8 A. Jodi Lamprecht had -- she had multiple
9 claims from numerous providers, and all of
10 those -- all of the charges appeared to be for the
11 same types of services. And in reviewing the
12 claims, the first -- first task, if you will, was
13 to sort out -- to attempt to sort out whether or
14 not those claims were duplicate bills.

15 In the -- in the end, my determination
16 was that there was potentially one duplicate
17 claim, which is what I passed on to Kutak Rock in
18 addition to the information relative to a
19 potential discount range. However, I do know that
20 it took considerable time to determine whether or
21 not all of the claims that were submitted were for
22 individual providers that -- that did, in fact,
23 provide all of those services.

24 Q. And your ultimate recommendation was to
25 seek a 40 percent discount?

1 A. Correct.

2 Q. Do you know how those claims -- or
3 whether they settled?

4 A. I don't.

5 Q. If you'd look at Exhibit 192 on Page 3,
6 there's two entries for Jodi Lamprecht. Do you
7 see those?

8 A. I do.

9 Q. Are those the same claims referred to in
10 your report?

11 MS. BAUMERT: Did you say two
12 entries? There's three.

13 A. There's actually three.

14 Q. Well, one is Gary, isn't it?

15 MS. BAUMERT: Oh, yeah, 104. Sorry.

16 A. Yeah. The -- in terms of how these are
17 rolled up under the Mercy Medical Center, they're --
18 a number of the claims that I reviewed would have
19 rolled into Mercy Medical Center, which was part
20 of the confusion, because the billings were from
21 multiple providers, that while they had different
22 tax ID numbers, the thinking was that they
23 probably were employed by Mercy. So I suspect
24 that the dollars all rolled into the Mercy Medical
25 Center, which is why you only see two.

1 Q. Okay. All right. Next one on the bottom
2 of Page 13, Patient 7 is patient L.J. Is that
3 Lilly Johnson?

4 A. Yes.

5 Q. Okay. And Ms. Johnson had some care at
6 Bryan Medical Center; correct?

7 A. Correct.

8 Q. And you recommended a discount of 20 to
9 25 percent off those billed charges.

10 A. Correct.

11 Q. Why only a 20 to 25 percent discount
12 versus the 40 or 50 that you had mentioned
13 earlier?

14 A. The -- the work that she had completed
15 there was predominantly lab work. And there were
16 other payments in looking at the other claims --
17 predominantly because it was -- it was for labs
18 and it was consistent with other payments that
19 they had made.

20 Q. And you stated then if you can't get a 25
21 percent discount, a 20 percent discount would be a
22 reasonable discount; correct?

23 A. Correct, for the hospital outpatient.

24 Q. Now, on your date of service report for
25 L.J. --

1 A. Uh-huh.

2 Q. -- are you there?

3 A. No, but I can get there.

4 Q. Okay.

5 A. Okay.

6 Q. There's four entries for Bryan Medical
7 Center under L.J.; correct?

8 A. Correct.

9 Q. And they're all dates of service in --
10 between September 2016 and November -- or excuse
11 me, December 2016?

12 A. Correct.

13 Q. Were you aware that CVA had entered into
14 a settlement agreement with Bryan Medical Center
15 in March of 2017?

16 A. Was not.

17 Q. Why would you be reviewing a claim that
18 fell -- well, let me strike that and we'll start
19 over.

20 (Deposition Exhibit 193 was marked.)

21 Q. Ms. Reed, I'm handing you what's been
22 marked as Deposition Exhibit 193. And this is an
23 E-mail from Rick Smithpeter to Natalie Skutt and
24 Julie Maschka and Hannah Inman at The Benefit
25 Group.

1 A. Okay.

2 Q. And it's dated March 8, 2017. Do you see
3 that?

4 A. Yes.

5 Q. And Mr. Smithpeter writes, Please see
6 attached direct agreement CVA has made with Bryan.
7 We will want to do the same payment method as we
8 did for Faith Regional whereas TBG will reprocess
9 claims at 204 percent and send one check for all
10 claims, then reconcile the amount owed by CVA and
11 CVA will pay. And then he attaches an E-mail
12 between Mr. Tim Meier, M-e-i-e-r, and
13 Mr. Smithpeter. Do you see that on Page 2870?

14 A. Correct.

15 Q. And it says, Tim, please confirm. E-mail
16 response is fine. Bryan agreement for 2016
17 claims, 35 percent discount of billed charges.

18 A. Yep.

19 Q. And then Mr. Meier responds, Yes, we are
20 good with this. The only other item I would add
21 is if we or you uncover another unpaid claim in
22 2016 that this same arrangement will apply.

23 Thanks. Correct?

24 A. Yep. Correct.

25 Q. So does it appear to you that CVA had

1 reached an agreement with Bryan in March of 2017
2 to get a 35 percent discount off billed charges?

3 A. It does.

4 MS. BAUMERT: Objection; exceeds
5 the scope of the report, speculation,
6 foundation. You need to give me a
7 minute.

8 THE WITNESS: Yep.

9 Q. So if CVA had an agreement with Bryan for
10 2016 claims that provided for a 35 percent
11 discount and Lilly Johnson's claims were incurred
12 in 2016, why were you reviewing this?

13 A. I reviewed it because Lilly Johnson's
14 father, I believe it was father, contacted Kutak
15 Rock on her behalf to request assistance in
16 resolving an outstanding claim when they received
17 an EOB and an invoice that they received from
18 Bryan.

19 Q. Okay. But CVA and Bryan had already
20 agreed to a 35 percent discount.

21 MS. BAUMERT: Objection; speculation,
22 foundation, exceeds the scope of the
23 report.

24 A. Bryan sent the invoice, and the explanation
25 of benefits indicated it was outstanding.

1 Q. Well, you recommended a discount of 20 to
2 25 percent at a time that CVA already had a 35
3 percent contract.

4 A. I was not aware of that.

5 MS. BAUMERT: Objection; form,
6 foundation, speculation, exceeds the
7 scope.

8 Q. So CVA didn't tell you that it had an
9 agreement -- a settlement agreement or a direct
10 contract with Bryan for 2016 claims at a 35
11 percent discount?

12 A. I did not know that.

13 Q. Would you agree that CVA did better on
14 its direct contract than the amount you
15 recommended?

16 MS. BAUMERT: Objection; form,
17 foundation, speculation, exceeds the
18 scope.

19 A. Yes, the 35 is better than the 20 to 25.

20 Q. That you had recommended.

21 A. Correct.

22 Q. Now, look at Exhibit 192. On Page 2
23 there is four entries for Lilly Johnson. Do you
24 see those?

25 A. I do.

1 Q. Are those the same claims that you
2 reviewed?

3 MS. BAUMERT: Objection; form,
4 foundation.

5 A. Yes.

6 Q. And according to Exhibit 192, for three
7 of them the negotiator was Alison Gutierrez at
8 Kutak Rock and for the fourth one it was Rick
9 Smithpeter at CVA; correct?

10 A. Correct.

11 Q. Now, as I did the math, it looks like the
12 settlement amount is a 34 percent discount.

13 MS. BAUMERT: Objection; form,
14 foundation, speculation.

15 Q. Which is a lower discount than the
16 settlement agreement that Mr. Smithpeter entered
17 into in March of 2017; correct?

18 A. I would have to do the math but --

19 MS. BAUMERT: And I think you'd
20 need to be --

21 THE WITNESS: Yeah.

22 MS. BAUMERT: -- able to read this.
23 Do you want her to do the math?

24 Q. Well, we can -- we can do the math if you
25 want. Let's do a hypothetical. I want you to

1 assume that the Lilly Johnson entries listed on
2 Exhibit 192 add up to a 34 percent discount off
3 billed charges.

4 MS. BAUMERT: Objection; form,
5 foundation, speculation. You can't ask
6 her to --

7 MR. THALKEN: I'm asking her --

8 MS. BAUMERT: -- assume that it's
9 34 percent.

10 MR. THALKEN: She's an expert, she
11 can assume facts.

12 MS. BAUMERT: Assume about the math
13 that you have in front of her that
14 you're not allowing her to actually
15 calculate.

16 Q. Do you need a calculator? Do you -- do
17 you want to do the math, Ms. Reed?

18 MS. BAUMERT: You want her to do
19 math in front of you?

20 MR. THALKEN: You just asked [sic]
21 her that it's unfair if you don't. If
22 you're not going to agree to my
23 hypothetical assumption --

24 MS. BAUMERT: Why don't we take a
25 break, Tim --

1 MR. THALKEN: Sure.

2 MS. BAUMERT: -- and let her do some
3 calculations --

4 MR. THALKEN: Okay.

5 MS. BAUMERT: -- so that we're
6 talking about apples to apples.

7 MR. THALKEN: Sure.

8 (A recess was taken from 11:34 a.m. to
9 11:44 a.m.)

10 Q. All right. Ms. Reed, have you had a
11 chance to do the math?

12 A. I did.

13 Q. All right. What -- did you determine what
14 the percent discount was on --

15 A. Thirty-five.

16 Q. Thirty-five percent?

17 A. Uh-huh.

18 Q. So the same discount as what the
19 settlement agreement was in --

20 A. Correct.

21 Q. -- March of 2017?

22 A. Correct.

23 Q. So CVA paid you \$350 an hour to review
24 these and they paid Kutak Rock whatever their rate
25 was to review these and they got the same discount

1 that was already in place.

2 A. Okay.

3 Q. Is that fair? I mean --

4 A. Yes.

5 Q. I mean, if the contract was for a 35
6 percent discount on 2016 claims at Bryan, wouldn't
7 it have just been a matter of paying a 35 percent
8 discount rather than having a law firm and a
9 consultant involved?

10 MS. BAUMERT: Objection, form.

11 A. I don't know the answer to that.

12 Q. Number 8, Patient E.L., is that Long, the
13 last name?

14 A. Yeah, Erica Long.

15 Q. All right. And this is a dispute with
16 Hutchinson Regional Medical Center; correct?

17 A. Correct.

18 Q. And ultimately Hutchinson agreed to
19 accept a settlement of 50 percent off the total
20 billed amount; correct?

21 A. Correct.

22 Q. And they agreed to accept that discount
23 even though there was no direct contract in place;
24 correct?

25 A. Correct. It was a single case agreement

1 that was put in place between -- yes, a single
2 case agreement was put in place.

3 Q. Next one is Patient 9, Patient S.B. is
4 that Mr. Bechard, B-e-c-h-a-r-d?

5 A. Yes.

6 Q. Steven Bechard?

7 A. Yes.

8 Q. All right. And this was a dispute over a
9 \$689 invoice for an X-ray; correct?

10 A. Correct.

11 Q. And you recommended a 25 percent discount.

12 A. Correct.

13 Q. And looking at Exhibit 192, the first
14 entry there for Steven Bechard -- first page of
15 Exhibit 192.

16 A. Oh.

17 Q. Sorry. Is that first entry the -- the
18 bill that we're talking about?

19 A. Correct.

20 Q. And it looks like, according to this, CVA
21 paid -- just paid the \$344.80. Well, let me
22 restate. It looks like the full amount of the
23 claim, \$689.80, was paid.

24 A. Correct.

25 Q. So there was no discount earned on this

1 one.

2 A. Correct.

3 Q. And you consulted -- you put some time in
4 on this one?

5 A. I did.

6 Q. And Kutak Rock put some time on this one?

7 MS. BAUMERT: Objection; speculation,
8 form.

9 A. I provided my recommendation to them.

10 Q. Okay. So presumably they billed some
11 time to this?

12 A. I would assume so.

13 Q. And the end result of all that work is
14 there was no discount.

15 A. Well, the total amount was paid. Well,
16 only the 344.80 was paid and the balance -- but
17 the member was balance billed. So you could argue
18 that the member provided the discount.

19 Q. Okay. In your experience is \$689 a --
20 usually a reasonable and customary fee for an
21 X-ray?

22 A. That is a reasonable fee for an X-ray.

23 Q. Next, Number 10. Is this Debbie Nelsen?

24 A. Yes.

25 Q. Okay. And looks like there -- on your

1 date of service report there are a number of
2 entries on here. This one talks about an invoice
3 from Oncology Associates --

4 A. Correct.

5 Q. -- is what -- do you know which invoice
6 you're referring to in your date of service
7 report?

8 A. I would have to look at it specifically.
9 It is -- it's the invoice that showed 480 units.

10 Q. Do you know if this is a dispute over the
11 \$779.24 charge?

12 A. No. I -- I can't say for sure, but I
13 believe it was much -- I believe it was higher
14 than that. It was for 480 units of an oncology
15 drug.

16 (Deposition Exhibit 194 was marked.)

17 Q. I'm going to hand you what's been marked
18 as Exhibit 194. Can you tell from that document
19 which bills these are? These talk about 480 units,
20 but I don't know which one we're talking about.

21 A. This does show the 480 units. To get the
22 actual dollars you have to take the 480 times the
23 873.60 --

24 Q. Okay.

25 A. -- to determine what they would actually

1 have to pay.

2 MS. BAUMERT: Maybe we should
3 clarify what page you're on.

4 THE WITNESS: Oh, I'm sorry.

5 MS. BAUMERT: Down at the bottom,
6 302997. Tim was talking about 303005.
7 So it's the second page of Exhibit 194.

8 A. Actually it's on each one of them. It's
9 on 303 -- 3005. It's the first line to show you
10 there -- it shows you dates of service. So she
11 got 480 units on the dates of service 2-22-16 to
12 2- -- so that was a date -- when she came in on
13 that date, she got 480 units. And that -- so that
14 would have been the 873 times the 480. And then
15 she came back in on 3-28, so these are weeklies
16 that she's coming in for oncology treatments. So
17 she'd have gotten 480 units each week when she
18 came in.

19 Q. Okay. But to determine what the charge
20 was, you'd have to -- you'd multiply 873.60 times
21 480?

22 A. Times 480. That's the cost of that drug.

23 Q. Okay.

24 A. Yep.

25 Q. And you wanted to verify whether she

1 actually got 480 units?

2 A. Correct, yeah. That was my question, was
3 to say, before you do anything with that, before
4 you pay it, make sure that she did, in fact, get
5 the 480 units. So that would have been the cost
6 associated with it.

7 Q. Did you -- did you actually verify that?

8 A. I didn't, but that would have been part
9 of the negotiations.

10 Q. Okay. And the negotiations were handled
11 by Kutak Rock?

12 A. Correct.

13 Q. And you weren't privy to those
14 negotiations --

15 A. No.

16 Q. -- correct? Well, if I multiply \$873.60
17 times 480, I get \$419,328.

18 A. Right. So evidently when I look at what
19 they did for this for the settlements based on
20 their billing --

21 Q. What are you looking at right now?

22 A. I'm sorry. I'm looking at the -- Exhibit
23 192.

24 Q. Okay. Page 3 are you looking at --

25 A. I'm looking at Page 3 --

1 Q. -- Debbie Nelsen?

2 A. -- Debbie Nelsen.

3 Q. And this shows a claim amount of
4 \$2,850.61. Is that -- are we looking at the same
5 thing?

6 A. We are. So I don't see where the claim
7 payment is on this reconciliation.

8 Q. Looking back at Exhibit -- I'm just --
9 I'm a little confused because, again, my math is
10 around \$420,000.

11 A. Uh-huh.

12 Q. That would be a weekly charge? I mean,
13 that seems --

14 A. Not unusual for an oncology drug --

15 Q. Really? Okay.

16 A. -- unfortunately.

17 Q. Okay. And that's what I'm trying to
18 understand. Exhibit 194, when it says charges, is
19 that really a multiplier or is that the actual
20 total charge?

21 A. When you're dealing with -- the CPT code,
22 when it says -- has a J in front of it, a J code
23 is a drug code.

24 Q. Okay.

25 A. And so -- and when it says quantity for

1 that 480, that's typically what that -- what that
2 means. Now, that's why -- but not everyone bills
3 that in the same manner. So I know that, for
4 example, some facilities will bill each unit
5 separately and they will list every single -- like
6 if you've got 480 units, you'll have 480 listed
7 separately. So it -- you really have to go and
8 ask the question, which was why --

9 Q. Uh-huh.

10 A. -- I said verify. Because it could be
11 that there is a very small charge attached to that
12 and it's only an admin fee that's being charged to
13 administer the drug.

14 Q. Looking at the date of service report, I
15 mean, there's nothing close -- close on Patient
16 D.N. to a \$400,000 charge; right?

17 MS. BAUMERT: I'm sorry. The date
18 of service report --

19 MR. THALKEN: Yeah.

20 MS. BAUMERT: -- you mean 19- --
21 oh, that one --

22 MR. THALKEN: Yeah.

23 MS. BAUMERT: -- on her exhibit.

24 MR. THALKEN: On the back of her --

25 MS. BAUMERT: Yeah.

1 MR. THALKEN: -- expert report.

2 Q. I mean, as I look at this, the highest
3 charge here is \$44,944.75. I'm just trying to
4 understand what you're looking at and how you're
5 getting to the -- what the dispute was here.

6 A. Because the -- the date of service
7 report --

8 Q. Well, I don't think we need to recreate
9 this in this deposition but -- let's just, I
10 think, move on, might be the --

11 A. I can't find what I'm looking for.

12 Q. Well, as I read Exhibit 192, on Page 3
13 there's an entry for Debbie Nelsen for \$2,850.61.
14 That's the claim amount. And according to this,
15 TBG paid \$2,071.37, leaving a balance-billed
16 amount of 779.24, of which then CVA paid \$587.30
17 to resolve it, if I'm reading this correctly. And
18 I guess my question for you is, is Exhibit 192 on
19 Page 3 when it talks about Debbie Nelsen, is that
20 the claim that you were reviewing?

21 MS. BAUMERT: Objection; speculation,
22 form.

23 A. I know the claim I reviewed had 840 [sic]
24 units on it and it was for multiple weeks. I'd
25 have to go back and look at the --

1 Q. Yeah.

2 A. -- individual claim I pulled.

3 Q. And I don't know that I've given you
4 every document, so I don't want to be unfair here.
5 I just -- I saw 480 on those and I didn't -- I
6 didn't know if that's what you were relying on.
7 But as I understand your testimony, we can't tell
8 from the stuff I've given you at this point.

9 But -- but to my question on Exhibit
10 192, do you know if on Page 3 where it says Debbie
11 Nelsen, \$2,850.61, is that what you were reviewing
12 in your report?

13 A. No, it's not, because --

14 Q. Okay.

15 A. Yeah. No, it's not.

16 Q. And how do you know it's not?

17 A. Because -- I guess, no, what I should say
18 is I don't know for sure because I would have to
19 compare that to the actual claims that I reviewed.

20 Q. Okay.

21 A. Yeah.

22 Q. Fair enough.

23 A. Yeah.

24 Q. At any rate, you recommended a discount
25 of 20 to 25 percent off of the -- well, what is

1 that off of?

2 A. Average wholesale price, AWP.

3 Q. Well, you said for the drugs I
4 recommended average wholesale pricing minus 25
5 percent. Above that --

6 A. Correct.

7 Q. -- you said, I recommended a discount in
8 the range of 20 to 25 percent off billed charges.

9 A. Right, for administering the drug. Yep.

10 Q. So administering the drug, 20 to 25
11 percent discount; the drug itself, average
12 wholesale price minus 25 percent.

13 A. Minus 20 to 25 percent, correct.

14 Q. Next entry, Number 11, K.D., is this Kim
15 Duerke, D-u-e-r-k-e [sic]?

16 A. Correct.

17 Q. Tell me what you did on this patient.

18 A. On this one I actually did very little.
19 This patient sent in an EOB indicating that they
20 had a credit balance of this 1467.74. I looked
21 through the outstanding claim files that -- that
22 we had and -- to see if I saw anything that was
23 owing. I didn't see anything and so essentially
24 said the way it looks, there is a credit balance
25 of the 1467.74. And unless a provider submits a

1 bill, it looks like there's a credit balance.

2 Q. So this one had been processed correctly
3 in your view?

4 A. I really couldn't tell. I didn't have
5 enough information to know one way or the other.

6 (Deposition Exhibit 195 was marked.)

7 MR. THALKEN: Megan, this is CVA
8 302477.

9 Q. So I'm handing you, Ms. Reed, what's been
10 marked as Exhibit 195. And is this the E-mail you
11 were referring to when it said K.D. sent Kutak
12 Rock an explanation of benefits indicating she had
13 a credit of 1,467.74?

14 A. Yes.

15 Q. Okay. And then the second page --

16 A. Yep.

17 Q. -- of that is the EOB; correct?

18 A. Correct.

19 Q. And it shows employee's responsibility is
20 zero dollars.

21 A. Correct, yep.

22 Q. And the plan payment, it shows a credit
23 of \$1,467.74.

24 A. Correct.

25 Q. And this member wanted to determine if

1 that credit amount to the plan was correct?

2 A. Correct.

3 Q. And so you -- Kutak Rock spent time
4 figuring out -- well, sending this to you;
5 correct?

6 A. Correct.

7 Q. And how much time did you spend reviewing
8 this?

9 A. Half hour to an hour at the most.

10 Q. Okay. So -- and you're charging \$350 an --

11 A. Yes.

12 Q. -- hour --

13 A. Correct.

14 Q. -- to tell the plan member that the plan
15 is owed a credit?

16 A. Correct.

17 Q. And Kutak Rock is billing legal fees to
18 confirm that the plan is owed a credit?

19 MS. BAUMERT: Objection; form,
20 foundation.

21 Q. Do you think that's the best use of the
22 plan's funds, to spend money on a law firm and a
23 consultant to confirm that the plan is already
24 owed a refund which is what had been reported to
25 the plan?

1 MS. BAUMERT: Objection; form,
2 foundation, exceeds the scope of her
3 report.

4 A. There may have been a provider bill to
5 cover this.

6 Q. But you don't know of one.

7 A. No, but I was looking to answer the
8 question the member asked.

9 Q. And you were charging for your time to do
10 that because -- I mean, usually if I get something
11 in the mail that says I'm owed a refund, I don't
12 hire a law firm and a consultant to verify that
13 the refund is owed. I mean, is that normal?

14 MS. BAUMERT: Objection; form,
15 foundation, exceeds the scope of her
16 report.

17 A. We were simply trying to respond to the
18 member.

19 Q. And this member, she was not balance
20 billed.

21 A. Simply trying to respond to the member's
22 question.

23 Q. And the member didn't say, hey, I've been
24 balance billed; right?

25 A. The member's question was, can you tell

1 me what this is. And we're trying to respond to
2 that.

3 Q. Okay. And so at \$350 an hour, you tried
4 to respond to the member's question that, hey, I
5 got an EOB that says the plan is owed \$1400. Can
6 you verify that the plan is owed \$1400?

7 A. I believe --

8 MS. BAUMERT: Objection, form.

9 A. -- I answered the question.

10 Q. Is that what you did?

11 MS. BAUMERT: Form.

12 A. I believe we did.

13 Q. And you confirmed that, in fact, the plan
14 was owed \$1400.

15 MS. BAUMERT: Form.

16 A. Correct.

17 Q. And how much money did it cost the plan
18 to determine that it was owed \$1400?

19 A. I don't know the specifics of that.

20 Q. More than \$1400?

21 MS. BAUMERT: Objection --

22 A. I don't know.

23 MS. BAUMERT: -- form, foundation.

24 Q. Number 12, looks like there's two
25 patients here. G.S., is that Gary Sipe?

1 A. It is.

2 Q. And S.R., is that Shelby Rahe, R-a-h-e?

3 A. Correct.

4 Q. Okay. And these are both claims with Via
5 Christi Health System?

6 A. Correct.

7 Q. You state in here, It was difficult to
8 find a person to work with at Via Christi.

9 A. That's correct.

10 Q. What did -- what do you mean by that?

11 A. It was just -- it was difficult to get in
12 touch with an individual that would -- that you
13 could talk with that had the authority to do any
14 kind of negotiations. As you went through their
15 billing office, the first response was, we don't
16 negotiate. Then when you asked to speak with a
17 supervisor, if you got passed to a supervisor, the
18 supervisor wouldn't call back.

19 And so finally I was asked to try and
20 make contact with individuals I had worked with
21 there previously. And so I actually ended up
22 making contact with a colleague of mine to try and
23 get some assistance to try and work through some
24 kind of a single case agreement.

25 Q. Okay. And looking at the bill, you

1 recommended a discount of 60 to 65 percent;
2 correct?

3 A. Correct.

4 Q. Did you think that the bill was -- that
5 the hospital was overcharging for the services?

6 A. I did think the bill was high. And I
7 also understood that from a health system
8 perspective and the size of the hospital that I
9 did not think that was an unreasonable discount.

10 Q. Sixty to 65 percent was not unreasonable?

11 A. Correct, due to the size of the facility.

12 Q. How big is Via Christi?

13 A. Via Christi is a -- I can't speak to
14 their -- to the total revenue. I can tell you as
15 a health system, they are one of the larger health
16 systems within the region, in the Kansas City
17 region.

18 Q. So this wouldn't be a rural hospital.

19 A. No, it's not.

20 Q. Okay. If you want to flip over to
21 Exhibit 192, and let's look at this. Are any of
22 these claims for Gary Sipe -- looks like there's
23 one maybe on Page 4, I'll direct your attention
24 to, for Via Christi.

25 A. Yes.

1 Q. And is that -- is this the claim you were
2 reviewing?

3 A. I don't have the specific dollar amounts
4 written down, but I believe that it is, yes.

5 Q. If you look at your date of service
6 report on the back of your expert report, there's
7 an entry there for September 26, 2016, for date of
8 service --

9 A. Yep.

10 Q. -- for --

11 A. Correct.

12 Q. -- \$33,089.34? And does that match --
13 that doesn't match.

14 A. It doesn't match.

15 Q. Yeah. That's the same date of service;
16 right?

17 A. It is the same date of service; it is the
18 same claim. I may have just recorded from a
19 different spot on the claim. It is the same claim.

20 Q. Okay. And so of the amount billed, the
21 36,000, TBG had already paid 18,000?

22 MS. BAUMERT: I'm sorry. 36,000?

23 MR. THALKEN: I'm looking at the --
24 Exhibit 192.

25 MS. BAUMERT: And what page are you

1 on? I'm sorry.

2 MR. THALKEN: Page 4.

3 A. TBG had paid the 18,053.25?

4 Q. Yes. So that would be about a 50 percent
5 discount?

6 A. Correct.

7 Q. And your -- your opinion is that a
8 discount of 60 to 65 percent would be a good
9 discount.

10 A. Correct.

11 Q. And TBG had paid 50 percent.

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Correct.

15 Q. And then CVA on top of that paid another
16 \$11,181.65 to settle the claim; correct?

17 A. Correct.

18 Q. It would be significantly less than 60 to
19 65 percent.

20 A. Yes.

21 Q. Would you assume for a moment that the
22 \$18,000 payment made by TBG was done at the
23 recommendation of AMPS. Okay?

24 You're calculating something here.

25 What's --

1 A. I am. Excuse me just a minute.

2 MS. BAUMERT: You're asking for
3 percentages.

4 A. Uh-huh. Okay.

5 Q. What did you just calculate there?

6 A. What I -- what I was calculating was the
7 percentages in terms of the amount that was
8 balance -- balance billed in relationship to the --
9 to the amount of the discount that both TBG had
10 gotten for the amount of the claim that the -- the
11 discount that was given and the amount that the --
12 that -- essentially the member responsibility.

13 Q. And what were those --

14 A. And --

15 Q. Well, okay.

16 A. I didn't keep them. But when I look at
17 the member responsibility and I look at -- yes,
18 TBG did calculate just over -- you know, close to
19 a 50 percent discount, but the member picked up a
20 large percentage as well. So had we gotten closer
21 to that 60 percent percentage, the member would
22 have had a much smaller percentage that they would
23 have had responsibility for.

24 Q. So what would a 60 percent discount on
25 billed charges be?

1 A. That would have increased that by
2 another -- another \$8,000. Did I do that right?

3 Q. Well, let me ask you another question.

4 A. Yeah.

5 Q. If CVA had gotten a 60 percent discount
6 off the billed charges, that would be a payment of
7 \$22,013.60.

8 A. Right.

9 Q. And TBG had paid 18,053.20.

10 A. Uh-huh.

11 Q. And then CVA on top of that paid another
12 \$11,181.65.

13 A. Right.

14 Q. So CVA didn't get a 60 percent discount
15 on this; isn't that true? CVA didn't get a 60
16 percent discount?

17 A. That's correct.

18 Q. But the \$18,000 payment that TBG did
19 make, was that reasonable for the charges?

20 A. Yes, I mean, that's a good discount. I
21 don't disagree with that.

22 Q. Okay. And then S.R. is the next one
23 within this group --

24 A. Uh-huh.

25 Q. -- Shelby Rahe?

1 A. Yes.

2 Q. And I'll refer you to Exhibit 192, Page 3.
3 Shelby Rahe, Via Christi, do you see that entry?

4 A. Tell me again what page we're on.

5 Q. Yeah. Page 3, it's the second from the
6 bottom. There's a Shelby Rahe.

7 A. Right, yep.

8 Q. Is that the claim you reviewed?

9 A. It is.

10 Q. Okay. And it looks like the dispute on
11 this claim was over \$474.13 out of total billed
12 charges of \$13,868.98?

13 A. Correct.

14 Q. And ultimately it looks like CVA just
15 paid the full amount of the balance bill?

16 A. Correct. And the decision to do that was
17 because -- the thinking was that if that one were
18 paid, that there would have been a better outcome
19 on the -- on the Gary Sipe's case.

20 Q. Kind of treat them as a package deal sort
21 of?

22 A. Correct.

23 Q. But on that one you still -- after paying
24 the additional 474, there was still a significant
25 discount off that --

1 A. Correct.

2 Q. -- bill.

3 A. Yes.

4 Q. Over 30 percent; right?

5 A. Correct.

6 Q. Next one, 13, Patient T.G., is that Terry
7 Granfield?

8 A. Yes.

9 Q. Okay. And you say, T.G. is part of the
10 CHI claim negotiations.

11 A. Uh-huh.

12 Q. Kutak Rock asked that I validate the
13 negotiated rate being offered by CHI to ensure it
14 meets the intended 195 percent of Medicare. The
15 rate being offered is in the form of a DRG payment.

16 A. Uh-huh.

17 Q. I expect to be able to make that
18 verification within the next week.

19 A. Correct.

20 Q. So a DRG payment, is that a
21 diagnosis-related group --

22 A. It is.

23 Q. -- payment?

24 A. Correct.

25 Q. And what's a DRG -- what does that mean

1 in laymen's terms?

2 A. Essentially it's a case rate, so it's for
3 a specific period of time for an inpatient stay.
4 Remember when I talked earlier about the APC
5 payment for outpatient? A DRG is the same type of
6 thing only for inpatient. That case has since
7 been resolved.

8 Q. Okay. How was it resolved?

9 A. I provided information back to Kutak Rock
10 indicating that the calculations were -- met
11 the -- met the -- met what they were looking for.

12 Q. What calculations are you talking about?

13 A. They were the intended 195 percent of
14 Nebraska Medicare.

15 Q. Okay. So at some point CVA entered into
16 a direct contract with CHI in which claims were
17 paid at 195 percent of Medicare?

18 MS. BAUMERT: Objection, form and
19 foundation.

20 A. I don't know the answer to that.

21 Q. Okay. Well, when you talked about the
22 negotiated rate being offered by CHI to ensure it
23 meets the intended 195 percent of Nebraska
24 Medicare --

25 A. That was an agreement of some form

1 between CHI -- with CHI. I can't speak to the
2 specifics of that.

3 Q. Okay. You don't know if it was finalized
4 or not --

5 A. Exactly.

6 Q. -- but you were --

7 A. Right.

8 Q. It was your understanding though that
9 there was a deal in the works, if you will, at 195
10 percent --

11 A. Correct --

12 Q. -- of Medicare.

13 A. -- yep.

14 Q. All right. And this one will be
15 difficult. Might need your help, Michaelle. So
16 same exhibit, Exhibit 192, there's an Attachment C.
17 And about nine pages from the back of Exhibit
18 192 -- it looks like that (indicating).

19 A. So it's after these --

20 Q. It's nine from the back. So start at the
21 back and go nine.

22 A. Okay.

23 MS. BAUMERT: So this one there are
24 four yellow --

25 MR. THALKEN: Yeah.

1 MS. BAUMERT: -- highlighted
2 entries, Terry Granfield, Randy Kelly,
3 Terry Granfield, Randy Kelly. You can
4 just look at mine if you want.

5 THE WITNESS: Okay. All right.
6 I'll look at yours. All right. I'll
7 stop sorting.

8 MR. THALKEN: That's fair enough.

9 Q. So there's an entry on the page for Terry
10 Granfield. Do you see that?

11 A. I do.

12 Q. Is that the claim you were reviewing for
13 him?

14 A. 41,000, yes.

15 Q. Okay. And then if you'd look at the next
16 page, it looks like it goes on, if you want to
17 flip the page. There's some notes in there, 195
18 percent of Medicare per TBG. Do you see that?
19 \$7,855.32?

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. Yes.

23 Q. Then there's CHI notes, DRG 236. What
24 does that mean?

25 A. Every -- every case, if you will, based

1 on the severity of the case is assigned a number
2 by Medicare. And that tells you the -- the
3 weight, if you will, attached to that inpatient
4 stay.

5 Q. Okay. So did you do this spreadsheet?

6 A. I did not.

7 Q. Okay. Do you think the \$7,855.32 is the
8 accurate number for 195 percent of Medicare?

9 A. I'd have to calculate it to check that.

10 Q. So how does the DRG work versus 195
11 percent of Medicare?

12 A. The way that works is that Medicare
13 assigns a -- Medicare assigns a weight. Are we
14 talking this specific claim?

15 Q. In general, I think. I just -- I don't
16 fully understand --

17 A. All right.

18 Q. -- the DRG process versus 195.

19 A. Every -- every case starts at a weight of
20 one, and so -- and then from there the DRG
21 severity works up. So then the DRG is based on
22 its weight, so your conversion factor is then
23 multiplied times the weight assigned to that case.
24 So -- and your Medicare rate -- so it's your
25 Medicare rate times the weight.

1 So let's say I have a DRG at a weight
2 of one at \$10,000 for an inpatient hospital stay.
3 And then there's a weight attached to -- in this
4 case it was DRG 303, all right, which is a cardiac
5 surgery. So that weight is something greater than
6 one so then you're going to take my \$10,000 times
7 195 percent. So it's 95 times greater than one.
8 And that's how you're going to get 195 percent of
9 Medicare.

10 Q. Okay. You never saw the settlement
11 agreement or the direct contract with CHI though.

12 A. Did not.

13 Q. So you don't know if there's a DRG
14 provision in it or not.

15 A. I don't.

16 Q. Fourteen. Yeah, go ahead.

17 A. To be accurate though, I want to make
18 sure that what I'm stating is accurate. On the
19 last claim that I did review, that is what I was
20 looking for, was the 195 percent of Medicare for
21 that claim.

22 Q. And that's the Granfield claim that we're
23 talking about?

24 A. Correct.

25 Q. Fourteen on your report.

1 A. Yes.

2 Q. You talked about Kutak Rock negotiating
3 with CHI?

4 A. Correct.

5 Q. You weren't actively involved in the
6 direct negotiations; correct?

7 A. I was not. Typically what would happen
8 is if there was a case they were negotiating on, I
9 would be consulted on occasions that says we have
10 lab cases that we're reviewing and here's the
11 approach we are planning to take. Does that seem
12 reasonable? And -- so that was really the extent
13 of it.

14 Q. Okay. Let me go back to 13 before -- you
15 said, I expect to be able to make that verification
16 in the next week. You did --

17 A. I did complete that. That is complete
18 now.

19 Q. Okay. And then is that --

20 A. Yes.

21 Q. -- did you just talk to Kutak Rock about
22 it or what did you do?

23 A. Correct, yes.

24 Q. Is there any document about it or --

25 A. I passed back the same form that they

1 gave me and explained the numbers that were on the
2 form.

3 Q. Okay. Did you create any spreadsheets
4 regarding the CHI 195 percent --

5 A. Did not --

6 Q. -- figures?

7 A. -- no.

8 MR. THALKEN: I believe those are
9 all the questions I have. Thank you.

10 THE WITNESS: Okay. You're welcome.

11 MS. BAUMERT: Let's take a quick
12 break.

13 (A discussion was held off the record.)

14 (A recess was taken from 12:32 p.m. to
15 12:45 p.m.)

16 DIRECT EXAMINATION

17 BY MS. MITCHELL:

18 Q. Ms. Reed, my name is Megan Mitchell; I
19 represent AMPS and CDS in this matter. I want to
20 go back to some of your prior testimony about
21 experience with RBR plans. And when I say RBR,
22 you understand that to mean reference-based
23 reimbursement; correct?

24 A. Correct.

25 Q. Have you worked with an RBR plan since

1 2004, or was that the last experience that you had
2 with -- with an RBR plan?

3 A. That is my last experience in terms of
4 working with one.

5 Q. Okay. Are you aware of the differences
6 in various types of RBR products?

7 A. Yes, I am.

8 Q. Can you explain what you mean?

9 A. I understand -- my understanding with an
10 RBR product is that contracts -- contracts do not
11 exist with providers, that what is paid to a
12 provider is considered usual and customary for
13 services that are rendered to a member, and that
14 if the provider does not accept that as full
15 payment, then the members are balance billed.

16 Q. And is it your understanding that it
17 would be the hospital's decision whether to
18 balance bill a member; correct?

19 MS. BAUMERT: Objection; form,
20 foundation.

21 A. I do understand it's the hospital's
22 decision; however, there is not a hospital that
23 won't balance bill.

24 Q. On all of the claims that you've reviewed
25 then for these 14 patients, you understood that

1 they had all received a balance bill; correct?

2 A. I can't -- I can't speak to that because
3 I didn't review the entire -- the entire
4 situation. All I reviewed were individual claims.

5 Q. So some of these patients may not have
6 received a balance bill then?

7 A. I don't -- I don't know that specifically.

8 Q. Okay. And I believe you said that as
9 your understanding of RBR works, a contract with a
10 hospital does not exist. Is that your testimony?

11 A. Yes, it is.

12 MS. BAUMERT: Objection; form,
13 foundation, exceeds the scope.

14 Q. So is it your understanding that if a
15 plan adopts an RBR program, there would not be
16 direct contracts with hospitals prior to adoption
17 of an RBR program; correct?

18 A. (Witness nodded head.)

19 MS. BAUMERT: Objection; form,
20 foundation, exceeds the scope of her
21 report. You're going to have to answer.
22 She definitely can't hear you when
23 you're nodding.

24 A. That -- that's my understanding.

25 Q. That no direct contracts are in place

1 prior to implementing an RBR plan; right?

2 MS. BAUMERT: Same objection.

3 A. Correct.

4 Q. And do you have any familiarity with RBR
5 products in Nebraska as of 2015 or 2016?

6 A. I do not.

7 Q. Are you aware that there are at least
8 eight groups that are using RBR programs in
9 Nebraska working with AMPS and TBG currently?

10 A. I'm not aware of that.

11 Q. So you didn't talk to any of those groups
12 about their experiences with RBR as part of the
13 scope of your expert report in this case?

14 A. I did not.

15 Q. Are you aware that some claims that AMPS
16 handled for CVA were done in the 2015 plan year?

17 MS. BAUMERT: Objection to the form.

18 A. The claims I reviewed were 2015, 2016 and
19 then run-out for 2017.

20 Q. Okay. Did you understand that CVA was a
21 participant in a traditional PPO network for the
22 2015 plan year?

23 A. Yes, I did.

24 Q. And did you understand that CVA
25 contracted with AMPS to provide medical bill

1 review services for the 2015 plan year?

2 A. Yes, I did.

3 Q. Did you review the MBR agreement as part
4 of your expert report?

5 A. Yes. Yes, I did.

6 Q. And did you review the MBR -- the MBR
7 agreement while you were looking at claims that
8 had a 2015 date of service?

9 MS. BAUMERT: She's saying MBR.

10 A. By MBR, do you mean medical bill review?

11 Q. I do, yes.

12 A. Okay. I did not review that while
13 looking at claims.

14 Q. Okay.

15 MS. MITCHELL: And if someone has a
16 copy of the exhibits that have previously
17 been marked in this case, the MBR
18 agreement has previously been marked as
19 Exhibit 16. Is someone able to show
20 that exhibit to Ms. Reed?

21 MR. THALKEN: Yes, we have it. Okay.
22 It's in front of her.

23 Q. So, Ms. Reed, is this -- is this a copy
24 of the MBR agreement that you looked at in
25 connection with your expert report?

1 A. Yes, it is.

2 Q. Okay. So if you look at Section 2.4 of
3 the MBR agreement, do you see that?

4 A. I do.

5 Q. And it says, Client shall give AMPS full
6 authority to act on its behalf during the various
7 stages of an appeal of a claim payment reduced
8 based on a recommendation by AMPS and continuing
9 through the finalization of such appeal. Do you
10 see that?

11 A. I do.

12 Q. Did you ever review that language in
13 connection with your recommendations made to the
14 plan in connection with this case?

15 MS. BAUMERT: Objection; asked and
16 answered, form.

17 A. I did review that prior to reviewing
18 claims and indicated that I thought it was
19 problematic and language that should cause great
20 concern to the employer and to the plan.

21 Q. And why is that?

22 A. Because it abdicates the plan's
23 responsibility to an outside third party. And the
24 employer is -- and the plan, excuse me, as a
25 self-funded plan are ultimately responsible for

1 the dollars that get spent.

2 Q. So is it your opinion that the plan
3 violated a duty by engaging AMPS to perform
4 medical bill review?

5 MS. BAUMERT: Objection; form,
6 foundation, exceeds the scope of the
7 report.

8 A. I'm not talking about abdicating
9 responsibility. I'm talking about the best
10 interest of the plan.

11 Q. I'm not sure I understand your answer.
12 You said -- I believe you testified earlier that
13 the plan abdicated its responsibility by giving
14 responsibility to a third party.

15 A. No, I don't believe --

16 Q. I'm trying to understand your answer.

17 A. I don't believe I said that they
18 abdicated responsibility. I said I didn't believe
19 it was in their best interest to allow someone
20 else to have full authority.

21 Q. And did you read Section 2.5 of the MBR
22 agreement which says that if for any reason client
23 does not allow AMPS to conduct and control an
24 appeal that contests a recommended reduction by
25 AMPS, there will be no adjustment to the fees paid

1 to AMPS for its review of the claim, and it goes
2 on. Do you see that language?

3 A. I do.

4 Q. So is it your understanding that the
5 client could make its own decision on an
6 additional payment amount?

7 MS. BAUMERT: Objection; form,
8 foundation.

9 A. I do see that.

10 Q. And did you take a look at Attachment A
11 to the MBR agreement? Are you familiar with this
12 Attachment A?

13 A. Yes. I'm looking at it right now.

14 Q. Did you look at Attachment A when you
15 were making recommendations on any of the claims
16 for the 14 patients that we've talked about today?

17 A. I did not.

18 Q. When did you look at Attachment A?

19 A. I looked at Attachment A when I reviewed
20 the medical bill review document in the very
21 beginning of my engagement.

22 Q. Was that prior to the lawsuit being filed
23 in this case?

24 MS. BAUMERT: Objection; form,
25 foundation.

1 A. I can't speak to that specifically. It
2 would have been in sometime mid to late September.

3 Q. Of what year?

4 A. Actually it would have been early
5 October -- October 9th of '17.

6 Q. Okay. So you first looked at this
7 document in October 9th of -- on or around October
8 9th of 2017.

9 A. Correct.

10 Q. And do you see Paragraph A that discusses
11 percentage of savings, fees and compensation?

12 A. I do.

13 Q. So did you understand that CVA was
14 retaining 70 percent of the savings on any claims
15 that AMPS reviewed?

16 MS. BAUMERT: Objection; form,
17 foundation, exceeds the scope of her
18 report.

19 A. I do understand that.

20 Q. And that if -- if a claim is subsequently
21 successfully challenged in the appeals process by
22 the provider and a higher adjusted charge is
23 recommended by AMPS and paid by client, then upon
24 receipt by AMPS of verification of such payment
25 and a copy of the applicable revised or

1 supplemental explanation of payment, AMPS shall
2 credit or reimburse TPA for the account of client
3 for such proportionate amount of percentage of
4 savings fees previously paid or currently due to
5 AMPS. Do you see that in Section B?

6 A. I do.

7 Q. So did you understand that CVA would
8 receive a refund on AMPS's savings if it complied
9 with Paragraph D?

10 MS. BAUMERT: Form, foundation,
11 exceeds the scope of the report.

12 A. I -- I do see these provisions. My
13 review of this document was -- was not for the
14 purpose of making an evaluation about the specific
15 terms that the two organizations had set forth
16 but, rather, to look at a type of arrangement that
17 an employer typically has in place, the type of
18 partnership an employer typically has in place
19 with a third-party administrator for a self-funded
20 plan.

21 Q. Okay. So when you were looking at a
22 claim with a date of service of 2015 later on
23 after October of 2017, did you discuss with Kutak
24 Rock or anyone else the provisions on Attachment A
25 to the MBR agreement?

1 MS. BAUMERT: Objection; form,
2 foundation, scope of the report.

3 A. I did not.

4 Q. And then for the vast majority of the
5 claims that you looked at, they had dates of
6 service in 2016; correct?

7 A. Correct.

8 Q. As you were reviewing these claims, did
9 you look at the plan document for 2016?

10 A. Yes, I did.

11 Q. When did you look at the plan document?

12 A. I looked at the plan document as I was
13 reviewing specific claims to determine whether or
14 not there was a -- something was a covered
15 service.

16 Q. Did you look at the permitted payment
17 levels adopted in the plan document?

18 A. I did. Specifically there was a case
19 that dealt with maximum payment amounts for
20 prescription drugs, and that is noted in my -- in
21 my report. It's for -- I'll have to -- let me
22 check here to see which member. It's actually on
23 Page 10 of my report for the -- for the first
24 patient where it talks about the pharmaceutical
25 payments and there being restrictions relative to

1 what the calculations need to be limited to.

2 Q. Okay.

3 MS. MITCHELL: And if I could have
4 someone show Ms. Reed Exhibit 8 that has
5 previously been marked in this case.

6 A. Yes.

7 Q. Ms. Reed, is this Exhibit 8 a copy of the
8 plan document and summary plan description that
9 you reviewed as discussed on Page 10 of your
10 report?

11 MS. BAUMERT: I think she's going
12 to have to look at it to see.

13 MS. MITCHELL: Sure.

14 Q. And if it helps, on the very last page of
15 this exhibit, it appears to have been signed by
16 Tim Esser on January 19th, 2016.

17 MS. BAUMERT: I will say, Megan,
18 that she identifies in her report a
19 Bates number, CVA 1, as where her --
20 where the plan document began in her
21 report. So, as you know, there are
22 sometimes several iterations of the same
23 document, and the document is produced
24 by each party. And the one that you're
25 pointing to is a TBG marked document.

1 MS. MITCHELL: Sure.

2 A. And I -- I don't have with me the
3 complete document sum- -- summary plan document
4 that I reviewed. I do have a portion of it with
5 me. The cover page is the same, but beyond that I
6 can't say specifically it's the exact document.
7 So I guess I would refer you to the reference in
8 my report.

9 Q. Okay. Thank you.

10 In the portion of the report that you
11 have with you of the plan -- I'm sorry. Do you
12 have Page 42 and 43 of the plan document?

13 A. I do not. I go to Page 30.

14 Q. So you don't have anything after Page 30?

15 A. Not with me.

16 Q. Okay. Do you have Page 4 of the plan
17 document?

18 A. I do.

19 Q. Do you see a provision that says balance
20 billing?

21 A. I do.

22 Q. Do you see that that provision says,
23 Again, the plan has no control over any network
24 provider that engages in balance-billing
25 practices, except to the extent that such

1 practices are contrary to the contract governing
2 the relationship between the plan and the network
3 provider. Do you see that?

4 A. I do.

5 Q. Did you review that provision of the plan
6 document in connection with your work on this
7 case?

8 A. I did.

9 Q. When did you review this provision?

10 A. I can't say specifically when I reviewed
11 it. I do know I reviewed it because I have it
12 circled.

13 Q. Okay. And does that provision of the
14 plan document -- is it reflected in any of your
15 expert opinions in this case?

16 A. It -- it is not because it -- it's not.

17 Q. So you didn't rely upon this provision in
18 forming any of your expert opinions in this case?

19 MS. BAUMERT: Objection; asked and
20 answered, form.

21 A. In my -- in my expert opinion I do speak
22 to balance billing, and I speak to that -- I
23 reference it in the -- the sixth from the bottom
24 sentence on Page 6. And I also referenced it on
25 Page 7 under Letter B.

1 Q. Was it -- is it your opinion that any
2 hospital that balance billed a patient was acting
3 in violation of the plan document?

4 MS. BAUMERT: Objection; form,
5 foundation, exceeds the scope of her
6 report.

7 A. I was not connecting the two.

8 Q. Do you have an opinion on that sitting
9 here today?

10 MS. BAUMERT: Objection; form,
11 foundation, exceeds the scope.

12 A. Can you ask that question again?

13 MS. MITCHELL: Would the court
14 reporter mind reading that back, please?
15 (The last question was read by the court
16 reporter.)

17 A. The provider has no tie to the plan
18 document or to the plan because they have no
19 contract. So there would be nothing to be in
20 violation of. I mean, they have no relationship
21 with you.

22 Q. So is it your opinion that any of the
23 terms of the plan document don't govern payment
24 made by the plan to providers?

25 MS. BAUMERT: Objection; form,

1 foundation, exceeds the scope.

2 A. They have no relationship with you, they
3 have no contract.

4 Q. I would like for you to turn to Page 42
5 of Exhibit 8.

6 MS. MITCHELL: And, Michaelle, also
7 the CVA 0001 document that I have is not
8 a copy of the plan document. So unless
9 you have that in the room, I'll use
10 Exhibit 8.

11 MS. BAUMERT: Okay.

12 A. Okay. I'm on Page 42.

13 Q. Do you see the permitted payment level
14 provision at the bottom of the document?

15 A. Yes, the last -- yep. The last sentence
16 there?

17 Q. Right. And if you flip to Page 43, the
18 plan document shows that the permitted payment
19 level for inpatient covered services shall be
20 based upon 160 percent of the Medicare allowable
21 IPPS amount for the covered services or, if
22 greater, 135 percent of the cost of the covered
23 services. Do you see that language?

24 A. I do.

25 Q. Did you review this language in

1 connection with any of the 14 patient claims that
2 you reviewed in this case?

3 A. I did not.

4 Q. Did you review this language at any time?

5 A. I -- I can't say specifically. Yeah, I
6 can't say specifically that I did.

7 Q. So you don't have any recollection of
8 reviewing this language on Page 43 of the plan
9 document then.

10 A. I don't.

11 Q. Okay. And then if you turn to Page 70
12 of -- of Exhibit 8, the plan document.

13 A. (Witness complies.) Okay.

14 Q. There's a provision called basis for
15 benefit adjustment at the bottom of the page. Do
16 you see that?

17 A. I do.

18 Q. There's language there that says, The
19 claims delegate may, in its sole discretion,
20 increase reimbursement for allowable expenses
21 included in such hospital or facility claim by up
22 to 30 percent of the amount of the permitted
23 payment levels set forth above. Do you see that?

24 A. I do.

25 Q. Did you review this language at any time

1 when you were making recommendations on claims for
2 the 14 patients discussed in your expert report?

3 A. I did not.

4 Q. Have you reviewed this language at any
5 time?

6 A. I -- I cannot -- I can't recall if I did
7 or not.

8 Q. So you don't have any recollection of
9 reviewing the language in this basis for benefit
10 adjustment provision --

11 A. I don't.

12 Q. -- in the plan.

13 A. I don't.

14 Q. So if you read this language now, I
15 understand that you may not have seen this before,
16 but looking at the basis for benefit adjustment
17 language and turning back to the permitted payment
18 level provision on Page 43 of the plan document,
19 this appears to allow payment at up to 208 percent
20 of Medicare on a hospital or facility inpatient
21 claim. Would you agree with that?

22 MS. BAUMERT: Objection; form,
23 foundation, exceeds the scope.

24 A. So you're saying the 180, plus at the
25 discretion an additional 30.

1 Q. The 160 plus the --

2 A. Or I'm sorry.

3 Q. -- additional 30.

4 A. That's a 60?

5 MS. BAUMERT: Yeah, that's 160.

6 THE WITNESS: Okay.

7 MS. BAUMERT: And she's asking you
8 whether 160 plus 30 --

9 A. 160 and 30 is 190; right?

10 Q. Thirty percent of 160.

11 A. Ah, okay.

12 Q. And add that on to the 160.

13 A. Okay.

14 Q. Does that equal 208 percent?

15 MS. BAUMERT: Objection; form,
16 foundation, scope.

17 A. It would.

18 Q. That's just a math question.

19 A. Yeah, yeah. Yes.

20 Q. Okay. So in connection with any of your
21 work on this case, did you ever evaluate whether a
22 payment was made below or above 208 percent of
23 Medicare?

24 A. I -- I did not. But I can tell you that
25 in looking at the 195 percent, most of my

1 recommendations were above that because a number
2 of the facilities that -- where care was delivered
3 are rural facilities. And most of them, even for
4 Medicare, are recognized as -- as facilities that
5 cannot take -- that are entitled to additional
6 payments.

7 Q. Okay. And 204 -- 208 percent is higher
8 than 195 percent of Medicare; correct?

9 A. Correct.

10 Q. And that's -- that is the amount that CVA
11 agreed to pay the CHI hospitals. Is that your
12 understanding?

13 A. Correct.

14 Q. Okay. Can you turn to Page 75 of Exhibit
15 8, please.

16 A. (Witness complies.) Okay.

17 Q. Do you see the section entitled Assignment?

18 A. I do.

19 Q. Okay. And if you look at the third
20 paragraph under Assignment, do you see the
21 language that says, Any provider who has accepted
22 assignment of benefits and/or payment of benefits
23 from the plan and then pursues recovery from the
24 claimant, on any legal or equitable theory, shall
25 be acting in violation of this plan and shall be

1 required to immediately refund in full any and all
2 amounts paid to such provider by or on behalf of
3 the plan in connection with the claim in question.
4 Do you see that?

5 A. I do.

6 Q. Did you review this language in
7 connection with any of the recommendations that
8 you made on claims involving the 14 patients that
9 are discussed in your expert report?

10 A. I did not.

11 Q. Did you review this language at any other
12 time?

13 A. Not that I recall.

14 Q. Are you aware of whether anyone advised
15 the plan to seek a refund of any and all amounts
16 paid to any provider that balance billed a patient?

17 A. Not -- I don't know.

18 Q. Okay. Did you ever recommend to Kutak
19 Rock or to the plan that it should enter into any
20 direct contract?

21 A. Yes.

22 Q. Can you tell me about that recommendation?

23 A. There were two situations where direct
24 contracts were considered. One of them was with
25 the -- for Patient Number 8, Erica Long, at

1 Hutchison [sic] Regional Medical Center. We also
2 then for Via Christi, however, that one did not
3 come to fruition.

4 Q. So for patient E.L. -- when you say a
5 direct contract, do you mean a single case
6 agreement?

7 A. A single case agreement, yes.

8 Q. Okay. So you're not referring to a
9 direct contract between the CVA plan and the
10 provider that would govern claims other than that
11 single claim.

12 A. Correct. We -- yes. In each situation
13 that I referenced, they were single case
14 agreements, they were not ongoing direct employer
15 and -- employer and plan contracts.

16 Q. Did you have any involvement at all in
17 recommending that the plan enter into any direct
18 contracts between the employer group and the
19 provider?

20 A. I did not.

21 Q. I want to understand who you spoke with
22 about the recommendations that you made on the
23 claims in your expert report. Other than Kutak
24 Rock, did you speak with anyone at CVA about your
25 recommendations?

1 A. I did not.

2 Q. Okay. So you only spoke with Kutak Rock.

3 A. That's right.

4 Q. And I know we've talked about this a
5 little bit, but you didn't have any understanding
6 of whether a patient -- one of the 14 patients in
7 your report had received an invoice or a balance
8 bill as opposed to a collection notice as opposed
9 to a lawsuit; is that right?

10 A. Only if the patient referenced it in the
11 material that they sent.

12 Q. So otherwise you had no idea of the
13 status of the claim in terms of whether it was an
14 invoice all the way up to a lawsuit.

15 A. Correct.

16 Q. Would that information change the way you
17 would evaluate the claim?

18 A. I -- I don't -- I don't think so.

19 Q. So for purposes of the recommendations
20 that you made, it didn't matter whether the
21 patient had just received an invoice from the
22 hospital as opposed to whether the patient had
23 received -- had been named in a balance billing
24 lawsuit. Those cases should be treated equally.
25 Is that -- is that what I understand you to be

1 saying?

2 A. Not necessarily, because there were times
3 when a patient received -- their bill had been
4 turned over to the -- to a collection agency. And
5 so the -- the recommendation would be to -- rather
6 than go to the collection agency, to still contact
7 the hospital to do those negotiations and attempt
8 to negotiate with the hospital rather than the
9 collection agency.

10 Q. So is it your understanding that there
11 were times that a collection agency notice was not
12 responded to?

13 A. When you say not responded to, are you
14 talking about not responded to by the patient
15 or -- I'm not sure I understand.

16 Q. Well, I'm only asking you what you know.
17 So you said that you were aware of an -- of
18 instances where a patient would receive a
19 collection notice, but you or others acting on
20 behalf of CVA would contact the hospital, not the
21 collection agency; is that right?

22 A. That would be my recommendation. I can't
23 tell you if that was the way that it went.

24 Q. And why would that be your recommendation?

25 A. Because if -- in my experience if you're

1 able to negotiate still directly with the
2 hospital, you can avoid the fees that a collection
3 agency would pay if you can get the hospital to
4 pull that account back from the collection agency.

5 Q. Was -- it would be possible for the
6 collection agency to pursue a lawsuit if no one
7 responded to the collection agency though; right?

8 A. Well, I -- I suspect. I mean, it's pure
9 speculation, but I -- I doubt that they were ever
10 left totally hanging.

11 Q. And what makes you say that?

12 A. Because the -- the member did not come
13 back with a follow-up situation asking for
14 assistance.

15 Q. And did you ever try to evaluate in the
16 situation where a collection notice was received
17 whether the collection agency had actually
18 purchased the debt from the hospital as opposed to
19 just collecting a debt on the hospital's behalf?

20 A. Did not.

21 Q. Okay. Are you aware that there's -- that
22 that difference exists?

23 A. Yes, I am.

24 Q. Did you ever -- have you ever spoken to
25 anyone at AMPS in connection with your

1 recommendations made on claims in this case?

2 A. Have not.

3 Q. Have you ever spoken with anyone at AMPS
4 ever?

5 A. No, not that I'm aware of.

6 Q. Have you ever spoken with anyone from CDS
7 in connection with your work on this case?

8 A. Again, no, not that I'm aware of.

9 Q. Have you ever spoken with anyone from CDS
10 ever?

11 A. No.

12 Q. Did anyone ever give you any instruction
13 about whether to contact AMPS or CDS about any of
14 the claims that you reviewed in this case?

15 A. No, they did not.

16 Q. Did it ever occur to you to contact AMPS
17 or CDS about these claims?

18 A. No. I mean, I didn't have a reason to.

19 Q. Are you offering any opinion on whether
20 AMPS or CDS handled a claim incorrectly?

21 A. I'm not.

22 Q. So you -- you do not have an opinion that
23 AMPS handled any claims incorrectly in this
24 matter.

25 A. That really was not the scope of my

1 engagement.

2 Q. Okay. So -- and it is -- so you are not
3 expressing the opinion that AMPS handled any
4 claims incorrectly in this case.

5 A. I -- yeah, I did not review for that.

6 Q. And so you're also not expressing an
7 opinion that CDS handled any claims incorrectly in
8 this case.

9 A. Again, I didn't review for that.

10 Q. And the scope of your review was to
11 determine what additional amounts should be paid
12 on the claims that you reviewed?

13 A. That and to validate that the claims
14 submitted were accurate.

15 Q. As submitted by the hospital; correct?

16 A. Right, the hospitals or other providers.

17 Q. Okay. And so it wasn't the scope of your
18 review to determine whether a claim was paid in a
19 manner inconsistent with the plan document then.

20 MS. BAUMERT: Objection, form.

21 A. Occasionally, yes. If there was a
22 noncovered service that was being billed for, I
23 would identify that so that those charges were
24 not -- were not paid for if they were member
25 liability.

1 Q. I see. So you looked at the plan
2 document to determine whether a hospital was
3 attempting to recover on an inappropriate charge.

4 A. Correct. And if you look at patient --
5 Valley of Hope.

6 MS. BAUMERT: L.M.?

7 THE WITNESS: Yes.

8 A. If you look at Patient L.M., I think he's
9 like Number 4.

10 MS. BAUMERT: He is.

11 A. Yeah, he's Number -- Patient Number 4,
12 Lucas Meyers [sic]. You'll note that that's a
13 combination of both covered and noncovered charges
14 in that claim review.

15 Q. Right, I see that. But you were not
16 reviewing claims to determine whether they were --
17 they had been previously paid in a manner that was
18 inconsistent with the terms of the plan document;
19 right?

20 MS. BAUMERT: Objection, form.

21 A. I mean, it was -- it was kind of all
22 simultaneous.

23 Q. Right. And I'm just trying to figure out
24 whether you were looking at the amount that had
25 been previously paid on these claims to determine

1 whether those amounts were paid in accordance with
2 the terms of the plan document.

3 A. So -- so, yes, I did look at amounts that
4 had been previously paid, depending upon when the
5 billing came in. So it was that total episode of
6 care that I reviewed.

7 Q. Did you ever question the amount that had
8 previously been paid on the claim? That's what
9 I'm trying to get at. I understand that that was
10 part of determining what additional amount, if
11 any, should be paid. But did you ever reach the
12 conclusion that the amount that had previously
13 been paid was incorrect for any reason?

14 A. I did not.

15 MS. BAUMERT: Objection, form.

16 Q. Okay. Do you have any understanding of
17 how a percentage of Medicare would relate to the
18 prevailing PPO rate for plans in Nebraska?

19 MS. BAUMERT: Objection; form,
20 foundation, scope of the report.

21 A. Yeah, it's difficult to -- it's difficult
22 to say as a percent of Medicare because it's --
23 very few contracts that I'm familiar with in
24 Nebraska are written as a percent of Medicare.

25 Q. And so if -- if a general discount for a

1 PPO contract is 25 percent off of billed charges,
2 for example, do you have any way of determining
3 how a 25 percent discount off of billed charges
4 might relate to a percentage of Medicare?

5 MS. BAUMERT: Form, foundation,
6 scope of the report.

7 A. Yes, with some -- you know, with some
8 time you can back into that. I mean, it's -- but,
9 I mean, you need to have some other numbers to be
10 able to do that. It's just -- you need volumes
11 and --

12 Q. So when that --

13 A. You need volumes and --

14 Q. I'm sorry. Go ahead.

15 A. You need volumes and you need -- you need
16 weights and you need to know whether it's
17 inpatient or outpatient. It's not -- it's not a
18 simple calculation, 20 percent discount equals X
19 percent of Medicare.

20 Q. Sure. So, for example, with the CHI
21 agreement that was done at 195 percent of Medicare --

22 A. Uh-huh.

23 Q. -- do you have any understanding of what
24 the PPO rate might be with CHI, for example, to
25 use as a comparison?

1 A. I do not.

2 MS. MITCHELL: I think that's all I
3 have. Thank you.

4 THE WITNESS: Okay. Thank you,
5 Megan.

6 MS. VOGT: I have just a few, and
7 mine are kind of from the macro level.

8 THE WITNESS: Okay.

9 DIRECT EXAMINATION

10 BY MS. VOGT:

11 Q. When you were working with Kutak Rock,
12 would they contact you about a specific claim and
13 then you give them a recommendation and then they
14 deal with the hospital to try and get that result?

15 A. Uh-huh. Typically they would send me a
16 list of claims that needed to be reviewed or a
17 list of individuals that needed to be reviewed,
18 and then I would start to review the correspondence
19 and the claim files and then provide updates on
20 those as I finished my reviews. And then they
21 would have the communication back with the
22 respective providers.

23 Q. Did you review claims other than the ones
24 that are addressed in your report?

25 A. Did not.

1 Q. Were you ever provided with the results
2 that Kutak actually achieved?

3 A. I did not.

4 Q. Do you do the same kind of consulting for
5 other plans, examining claims and making a
6 recommendation?

7 A. I do on -- on occasion, not -- not in the
8 exact same manner. I do it -- I've done it more
9 for audit purposes where employers have asked me
10 to come in and audit claims to be sure that
11 they're being paid according to contracts and
12 being paid appropriately.

13 Q. So more of a reconciliation?

14 A. More of a reconciliation. And then --
15 yeah, I would say it's probably more of a
16 reconciliation.

17 Q. When you do that, is it in conjunction
18 with an attorney or just administrators?

19 A. Can be both. Depends on the reason why
20 the employer is asking for it.

21 Q. What things did you take into consideration
22 when you looked at each one of these claims?

23 A. I took -- I took into consideration the
24 place of service, so where -- where it was billed,
25 because that -- there are specific billing

1 requirements as a -- if you're a hospital, a
2 clinic, an outpatient center, if you're a
3 stand-alone outpatient center. So there's a
4 specific code, place of service 11, place of
5 service 21, 22. So I took that into
6 consideration.

7 Then I looked at the CPT codes so -- to
8 be sure that the service that was provided matched
9 the CPT code that was billed. If there were
10 pharmaceuticals that were provided, then I looked
11 at the J codes and I -- I actually looked up the
12 drugs that were provided to make sure that the --
13 essentially the -- the charges that were being
14 provided were reasonable given the cost of drugs
15 these days. Then made sure that those billings
16 for those were appropriate.

17 Oftentimes, if there were multiple
18 providers that were involved, I looked to be sure
19 that -- that there weren't duplicate charges
20 similar to the one that I mentioned in the Sioux
21 City market. Then from there I essentially
22 reconciled to be sure that they -- the billing was
23 accurate. From there, then depending upon what
24 each particular member was looking for,
25 investigated that particular claim to try to get

1 to the resolution. So, you know, were they
2 looking to see is this something that I owe? I
3 would sometimes do the reconciliation on what had
4 already been paid, what's the member's deductible,
5 had that been satisfied?

6 So it would be a matter of going back
7 and reconstructing what had been billed, what had
8 been paid and what the remaining balance was. And
9 then based on that, depending upon the service
10 that was -- it was outstanding on, would make a
11 recommendation back to Kutak Rock how they
12 would -- or what they could try and obtain for a
13 discount.

14 Q. And I -- it appeared to me from your
15 report that the majority of your recommendations
16 fell somewhere between 20 percent and 60 percent.

17 A. That's correct.

18 Q. What were the main factors that would
19 make a difference between a 20 percent
20 recommendation --

21 A. Uh-huh.

22 Q. -- and a 60 percent?

23 A. It would -- it would fall into a couple
24 of different categories. One of that would be
25 place of service. Another would be type of

1 provider. And the -- the last one would be then
2 the -- type of service, the provider type, and
3 then the other would be the service -- the service
4 itself. So if it's -- for example, on the
5 oncology drugs, I happen to know -- or when you're
6 dealing with drugs in particular, I happen to know
7 that there's a large markup. If you're dealing
8 with imaging services, imaging services are a very
9 profitable -- imaging and lab are very profitable
10 services within a hospital setting, as are
11 outpatient services. Those are very profitable
12 areas so typically you can have a larger discount
13 there.

14 If you're dealing with physician
15 services, in physician services you'll typically
16 see around a 40 to a 45 percent discount. In a
17 hospital setting, a lot of times you'll see
18 somewhere around that 50 percent mark. Again, it
19 depends upon the size of the group and it depends
20 upon whether or not that's a direct contract, size
21 of the group. And so all of those things get
22 taken into consideration.

23 Q. Towards the beginning of your testimony
24 you said that the health care group that you used
25 to work for --

1 A. Uh-huh.

2 Q. -- refused any claim from TPAs trying to
3 use reference-based reimbursement.

4 A. Correct.

5 Q. Do you recall if those programs were
6 based on a percentage of Medicare?

7 A. No, they were -- they were based on usual
8 and customary.

9 Q. And do you know how they were determining
10 usual and customary?

11 A. I -- that was part of the issue, was that
12 you couldn't really tell. What you were told is
13 that it's based on usual and customary, but it was
14 difficult to really understand what usual and
15 customary meant because that meant something
16 different to really just about every third-party
17 administrator.

18 Q. You also had mentioned that an RBR
19 program puts an employer at risk.

20 A. Yes.

21 Q. Tell me how it puts an employer at risk.

22 A. I believe it puts an employer at risk
23 because in today's market -- and, again, this is
24 my opinion, in today's market when you have a
25 difficult time hiring employees, I think that one

1 of the things we have to sell are our benefits.

2 And the -- an RBR program, because it puts members
3 and their families in a position where there is
4 balance billing and oftentimes that can create
5 financial strain for a family, I believe that that
6 disadvantages an employer when they're trying to
7 hire.

8 I also think that while it can create
9 savings for an employer on the short-term, I do
10 believe that over the long haul that there will
11 be -- that there will be costs that they will
12 incur through -- whether those will be costs on
13 the -- on the pharmacy side, on the medical
14 management side because they are not as involved
15 in managing their plan.

16 Q. Were you aware that in -- in the case of
17 the CVA plan that CVA had the ultimate authority
18 to accept or reject the recommendations for
19 payments?

20 MS. BAUMERT: Objection; form and
21 foundation, exceeds the scope of the
22 report.

23 A. I was not.

24 Q. You mentioned that you worked with some
25 employers and you had rejected reference-based

1 reimbursement and worked with the employers to get
2 like on a short-term plan?

3 A. Correct.

4 Q. Do you know if any of those employers
5 sued their TPAs?

6 A. I don't know that.

7 MS. BAUMERT: Objection, form and
8 foundation.

9 Q. Did you do any review to see if -- if the
10 claims you were looking at were a duplicate of
11 claims that had already been reviewed by somebody
12 else?

13 A. Did not.

14 Q. And in your review -- in the claims that
15 you looked at, did you see any that the materials
16 in the file you had showed that the claim had
17 already been paid?

18 MS. BAUMERT: Objection, form.

19 A. Are you saying that there was a
20 delinquency notice?

21 Q. No. I'm saying in any of the claims that
22 you reviewed, did it appear that that claim had
23 been submitted more than once?

24 MS. BAUMERT: Objection.

25 Q. In other words, that it had a duplicate.

1 MS. BAUMERT: Form, foundation.

2 A. Oh, only the one that I mentioned in the
3 Sioux City situation.

4 Q. You said something about even Medicare
5 recognizes there are facilities that are entitled
6 to additional payments.

7 A. Uh-huh.

8 Q. Would you explain to me?

9 A. Yes. There are facilities that are
10 classified as critical access facilities, such as
11 your smaller facilities. And so they put in place
12 what's called cost-based reimbursement. So if you
13 are classified as a critical access facility,
14 you're paid at 105 percent, is typically the
15 minimum payment that you receive.

16 Also, if you are a rural facility and
17 you're classified as such, there is a rural --
18 there's a rural factor that is applied. For
19 example, on the fixed outpatient reimbursement
20 that I was describing early on, your conversion
21 factor is increased by 1.5 percent. So if your --
22 you know, if your rate's a hundred dollars, you're
23 going to get an additional 1.5 percent on every
24 procedure that is performed.

25 Q. And early on you were talking about -- I

1 can't remember exactly how you phrased it, but
2 basically that if you didn't have a contract with
3 a hospital it would be hard to get them to
4 discount a bill --

5 A. Uh-huh.

6 Q. -- is that correct?

7 A. That's correct.

8 Q. In this case there were, in fact, many
9 instances of the claims that you worked on where a
10 discount was received.

11 A. Uh-huh, that's true. There are -- there
12 are some facilities that will accept something
13 other than what they've billed. I can -- I can
14 say that that is not a sustainable practice for
15 those facilities, particularly facilities that
16 are -- that are small in nature. And I -- that's
17 one of the reasons that I believe that contracts
18 are important, and over the long term I think it's
19 important, again, that you have that kind of a
20 relationship and that facilities understand what
21 it is that they're going to get paid and that it
22 does become more of a partnership arrangement
23 between employers and providers relative to how
24 health care is delivered. Because if we are ever
25 going to get our arms around what health care

1 costs, we need to figure out how to do it together
2 as opposed to creating what, I believe, is some
3 kind of an adversary relationship where we simply
4 decide what we're going to pay each other and not
5 sit down and have that conversation. So we need
6 to create opportunities where we bring one another
7 together to figure out how we make the system
8 better as opposed to just exchanging dollars at
9 whatever rate I decide I'm going to exchange those
10 dollars.

11 Q. And before you started your consulting
12 business, you worked for a provider --

13 A. I did.

14 Q. -- is that correct?

15 A. I did. I actually worked on both sides
16 of the house, as we said. I worked on the
17 provider side where I negotiated all the contracts
18 to determine what it was that the hospitals and
19 the physicians were going to get paid. And then I
20 ran the health plan where I worked with the
21 employers. And so did I, yes, try to make sure
22 that when I was negotiating with the insurance
23 companies that I kept those discounts as low as I
24 possibly could, I did that for a number of years.

25 And then I changed that practice so

1 that instead of trying to work to get just a
2 better reimbursement, I worked to put risk-based
3 contracts in place so that I could create a
4 situation where the payer, the ultimate payer, the
5 member, the employer, and the provider came
6 together through direct contracts and you treated
7 the TPA like they should be treated, and that is
8 someone who pays a claim.

9 Q. And I -- I'm not sure I understood what
10 you said the first time about risk based. Was
11 what you were saying is if the hospital is very
12 prompt in getting their billings out --

13 A. Right.

14 Q. -- they are rewarded by being paid the
15 full amount, whereas if they hold something for a
16 long time that might be reduced? And if that's
17 not right, just explain it to me.

18 MS. BAUMERT: Form. I'm going to
19 make an objection as to form, and I
20 didn't hear that at all so --

21 A. I don't remember that.

22 THE WITNESS: Can you --

23 MS. BAUMERT: She would have to go
24 back --

25 THE WITNESS: Yeah.

1 MS. BAUMERT: -- to the beginning
2 of the transcript to look.

3 A. Is there something you can reference in
4 the report that might help?

5 Q. Well, you said -- it was on Page 3, the
6 fourth dot down from the time -- or from the top.
7 And --

8 A. Oh, okay.

9 Q. -- Mr. Thalken asked you --

10 A. Right.

11 Q. -- about risk-based and what you said at
12 least --

13 A. Yes. Okay.

14 Q. -- in part in my scribble --

15 A. Uh-huh.

16 Q. -- was if provider met a standard for
17 promptness, they got full dollar amount; if longer,
18 maybe not.

19 A. Okay. So this is in relation to a
20 risk-based payment methodology. Okay. So in that
21 instance, there is a set dollar amount that you're
22 going to get paid for a particular procedure. And
23 in that case there's -- there are assumptions made
24 about what resources you're going to use, say, how
25 long I'm going to be in the -- in the operating

1 room, how many supplies are going to be used,
2 okay, so what the total resource consumption is
3 going to be. And so if I stay within those
4 parameters, then I'm going to either -- I'm going
5 to make money on that payment or maybe even come
6 out a little bit ahead. But if I use more
7 resources than what it is assumed when my payment
8 was put together, then I'll lose money on that
9 transaction.

10 Q. Okay. So just so I understand --

11 A. Uh-huh.

12 Q. -- the hospital sets a per procedure cost.

13 A. Correct.

14 Q. But if it takes much longer or they need
15 to use many more supplies than --

16 A. Correct.

17 Q. -- a normal one, they're not going to get
18 paid for the extra.

19 A. No -- correct. They're going to get paid
20 whatever that agreed-upon amount is. And if it
21 costs more than that, they're not going to get
22 paid for it.

23 Q. Okay. I understand now.

24 A. Okay.

25 MS. VOGT: I think that's all of my

1 questions.

2 MS. BAUMERT: I just have a few
3 just to clear things up.

4 CROSS-EXAMINATION

5 BY MS. BAUMERT:

6 Q. So when you were talking about dealing
7 with the RBR pricing systems in the late '90s and
8 the 2000s, that was when you were with Avera.

9 A. Correct.

10 Q. And none of those RBR pricing structure
11 type arrangements that you were dealing with were
12 in Nebraska; right?

13 A. Correct.

14 Q. And then we've been talking about RBR
15 programs and your opinions with regard to RBR
16 programs. And when you were speaking about them
17 not being in the interest of the employee or the
18 plan or the employer, you were contemplating RBR
19 means no advance direct contracting; correct?

20 A. That's correct.

21 Q. And so if there is an RBR arrangement --
22 and I think some of this is semantics about RBR
23 and what we all think of RBR in this case --

24 A. Uh-huh.

25 Q. -- and what you think --

1 A. Right.

2 Q. -- of RBR. If there is an advance direct
3 contracting element to an RBR program, you
4 wouldn't necessarily call it an RBR program --

5 A. That's correct.

6 Q. -- right? But we would here --

7 A. All right.

8 Q. -- in this case, this life. So if there
9 is direct contracting relationships as an element
10 of that and if there's an understanding on behalf
11 of the plan and the employer that those are going
12 to be put into place, then that would be sort of a
13 different opinion.

14 A. That would be a different opinion.

15 MS. MITCHELL: Object to the form.

16 This is Megan Mitchell.

17 MS. BAUMERT: We know.

18 MS. MITCHELL: I'm the only one on
19 the phone.

20 A. Yeah, if -- if there are, in fact,
21 contracts, then you're right, that is different.
22 But as you noted, I mean, that to me -- when you
23 say RBR, to me that -- that means there are no
24 contracts. But I understand in your context if
25 there's a contract in place, yes, that does change

1 the -- the outcome.

2 Q. Right. So if an employer is contemplating
3 an RBR arrangement with a third party like AMPS or
4 CDS, for instance, and understands that there will
5 be direct contracting as part of it, you would
6 consider that to be exercising their due diligence
7 on behalf of their plan.

8 A. Correct.

9 MS. MITCHELL: Object to the form.

10 Q. And then we talked a little bit as well
11 about Exhibit 192 and we were talking about Gary
12 Sipe. He's on Page 3. And you had been doing
13 some clickety-click calculating?

14 A. Uh-huh, yes.

15 Q. And we kind of started talking about
16 things with the plan, what the member obligation
17 was to pay and then we stopped talking about that.
18 I just wanted to make sure that that testimony was
19 complete --

20 A. Okay.

21 Q. -- because you had said that the member
22 paid more. What -- what would the member -- what
23 would Gary Sipe have paid? That's what we mean;
24 right?

25 A. Correct.

1 Q. Okay. So what would Gary Sipe have paid
2 on this -- this claim here that we have at the top
3 of that page, Page 4?

4 MS. VOGT: Object to the form.

5 MR. THALKEN: Foundation.

6 A. The calculations that I were doing is
7 that I took a look at the charge of the 36,689.
8 Yes, TBG did obtain a discount and took that and
9 paid the 18,053. And -- however, the member was
10 balance billed 18,636. So, in essence, the member
11 paid almost the same amount as what was -- the
12 discount amount that TBG obtained.

13 So if you look at what CVA paid, in --
14 in a typical arrangement -- and, again, I'm making
15 some assumptions. In a typical arrangement, that
16 18,636 would have been split between the amount
17 that TBG would have -- would have had on the
18 negotiated side for the provider and what CVA,
19 what the employer would have done. So in -- in my
20 world with a contract, Gary Sipes [sic] would have
21 paid -- overpaid by 20 percent because those
22 additional dollars would have been covered by the
23 employer and the provider.

24 Q. Okay.

25 MS. BAUMERT: I don't think I have

1 any further questions.

2 MR. THALKEN: Couple follow-ups on
3 that, Ms. Reed.

4 REDIRECT EXAMINATION

5 BY MR. THALKEN:

6 Q. So with respect to Gary Sipe when you're
7 looking at Exhibit 192 --

8 A. Uh-huh.

9 Q. -- you don't know whether Mr. Sipe made
10 any payments on this.

11 A. Correct. He may have ignored the amount
12 that was balance billed.

13 Q. Right, right. It's a balance-billed
14 amount but it's not a paid --

15 A. Correct.

16 Q. -- amount; correct? And CVA paid
17 11,186.65 [sic] to resolve the claim out of the
18 18,000 balance bill. Is that your understanding?

19 A. That's correct.

20 Q. Okay. You testified about critical
21 access facilities, and I think you said cost-based
22 reimbursements were paid at 105 percent?

23 A. Correct.

24 Q. 105 percent of what?

25 A. 105 percent of their cost.

1 Q. Okay. Is that different than 105 percent
2 of Medicare?

3 A. It is. There's a separate reimbursement
4 system for critical access facilities.

5 Q. Okay. You asked about -- or I think you
6 testified about long-term -- there are long-term
7 costs --

8 A. Uh-huh.

9 Q. -- because the employer is not as involved
10 in managing the plan --

11 A. Right.

12 Q. -- something to that effect? I didn't
13 quite understand what you mean by that.

14 A. What I mean by that is if you look at --
15 if you look at pharmacy spend today, which will --
16 pharmacy costs for a health plan today or for a --
17 for an employer today, it's not uncommon for that
18 to represent 40 percent of an employer's spend
19 today. And that continues to rise because of
20 specialty drugs. So if an employer -- and, again,
21 it's about attracting and retaining high quality
22 employees. If you're not a part of how those --
23 how your plan is offering those kinds of benefits,
24 then from a financial perspective you'll find
25 yourself in a position where you may not be able

1 to continue to offer that kind of benefit or be as
2 competitive.

3 Now, you may not be offering a -- a
4 pharmacy benefit, in this situation they are, but
5 you might have to find that you have to
6 drastically reduce that. I believe that an
7 employer who offers a health plan benefit to their
8 employees needs to be involved with that, needs to
9 understand what their employees are getting for
10 that benefit and then needs to be able to use that
11 as a tool to recruit and retain.

12 Q. Did the RBR program apply to prescription
13 drug costs?

14 MS. BAUMERT: Are we --

15 A. No, it's more really about kind of the
16 overall benefits that it can offer.

17 Q. And I'm asking about in this situation --
18 I mean, you mentioned prescription drugs. Is it
19 your understanding that the RBR program applied to
20 prescription drug costs?

21 MS. BAUMERT: I think -- haven't
22 you kind of finished your questioning?
23 Aren't we kind of jumping on a new line
24 of questions here?

25 MR. THALKEN: No, I'm following up

1 what she said.

2 MS. BAUMERT: Following up what she
3 said to their questions, not --

4 MR. THALKEN: Right.

5 MS. BAUMERT: -- to my questions.
6 So I don't understand where we're going
7 with the scope of this. Now we're like
8 reopening it and everybody is getting
9 another turn again?

10 MR. THALKEN: It's my deposition,
11 direct examination, cross-examination.

12 MS. BAUMERT: And redirect which --

13 MR. THALKEN: And now I'm
14 redirecting.

15 MS. BAUMERT: -- is supposed to be
16 based off of my cross.

17 MR. THALKEN: And their cross.

18 MS. BAUMERT: No, not their cross.
19 You're all on the same side.

20 MR. THALKEN: Well --

21 MS. BAUMERT: That's not the same
22 thing.

23 MR. THALKEN: -- we're here.

24 Q. Can you answer my question?

25 MS. BAUMERT: Well, I'm objecting

1 to this entire line of questioning so --

2 A. And I may have used an inappropriate
3 example.

4 Q. So -- but you don't know whether
5 prescription drug costs in this --

6 A. I don't.

7 Q. -- case were subject to RBR.

8 A. Correct. I don't know.

9 MR. THALKEN: That's all I have.

10 MS. BAUMERT: All right. You have
11 the right to read and sign the
12 deposition --

13 THE WITNESS: Okay.

14 MS. BAUMERT: -- if you would like
15 to do so to make sure your testimony is
16 recorded accurately.

17 THE WITNESS: Okay.

18 MS. BAUMERT: You have to in our
19 jurisdiction say on the record whether
20 you would like to read and sign it or
21 whether you waive that right. We've
22 been recommending that people read and
23 sign in this case because it's --

24 THE WITNESS: Okay. I will read
25 and sign.

1 MS. BAUMERT: -- so complicated and
2 there are lots of acronyms.

3 THE WITNESS: I will read and sign.
4 (The foregoing deposition was concluded
5 at 2:00 p.m.)
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STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

ERRATA SHEET

I, JEAN REED, do hereby attest that I have read the foregoing deposition and find it to be true and correct, with the exception of any changes that I have noted below:

PAGE	LINE	CHANGE/REASON FOR CHANGE
------	------	--------------------------

[illegible]

If you make no changes, please indicate NO CHANGES.

JEAN REED

Subscribed and sworn to before me this _____ day
of _____, 2019.

GENERAL NOTARY PUBLIC

1 CERTIFICATE

2 STATE OF NEBRASKA)
 : ss
3 COUNTY OF DOUGLAS)

4
5 I, Tina M. Nelson, Registered Merit
6 Reporter, and General Notary Public in and for the
7 State of Nebraska, do hereby certify that JEAN REED
8 was by me duly sworn to testify to the truth, the
9 whole truth, and nothing but the truth; and that the
10 deposition as hereinbefore set forth was reduced to
11 writing by me and is a true and accurate
12 transcription of the testimony given by said witness;

13 That the within and foregoing deposition
14 was taken by me at the time and place herein
15 specified and in accordance with the within
16 stipulations, the reading and signing of the witness
17 to the deposition having not been waived;

18 That I am not counsel, attorney or
19 relative of any of the parties or otherwise
20 interested in the event of this suit;

21 IN TESTIMONY WHEREOF, I have placed my
22 hand and notarial seal this 7th day of March, 2019.

23
24
25 _____
 Tina M. Nelson, RMR
 General Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CENTRAL VALLEY AG COOPERATIVE)
and CENTRAL VALLEY AG)
COOPERATIVE HEALTH CARE PLAN,)
Plaintiffs,) CASE NO. 8:17CV379
vs.) COST CERTIFICATE
DANIEL K. LEONARD, SUSAN)
LEONARD, THE BENEFIT GROUP,)
INC., ANASAZI MEDICAL PAYMENT)
SOLUTIONS, INC., d/b/a/)
ADVANCED MEDICAL PRICING)
SOLUTIONS, CLAIMS DELEGATE)
SERVICES, L.L.C., and GMS)
BENEFITS, INC.,)
Defendants.)
* * *

I, Tina M. Nelson, RMR, do hereby certify
that on February 22, 2019, I took the deposition of
JEAN REED on behalf of the defendants in the
above-captioned case, that said deposition was
transcribed and delivered to Mr. Timothy Thalken,
defendant TBG counsel; that the total costs of the
deposition to be assessed to the defendants are in
the total amount of \$_____.

Dated this 7th day of March, 2019.

Tina M. Nelson, RMR
General Notary Public

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